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ABSTRACT

The League of Women Voters/Tallahassee responded to an opportunity to research the concerns of Florida's judiciary following the disrupted general election of 2000. It received a grant for the Judicial Independence Project, a project supported by a grant from the Program on Law and Society of the Open Society Institute, from the League of Women Voters Education Fund in early 2001. This guide, developed from materials gathered and developed through the project, detailed instructions and materials designed for learning environments such as secondary classrooms, civic meetings, and town hall forums. It is intended to help participants understand the role of the courts and the concept of judicial independence. The guide's lesson format has been altered to make the activities more user-friendly for multiple audiences. The activities were designed to help Florida students and adults experience the role of Florida judges, understand the judicial decision-making process, explore judicial accountability and discipline, and determine threats to judicial independence. The guide is divided into the following sections: "Introduction" (M. Jones); "Foreword" (A. B. Pitts); "Keeping the Judiciary Strong" (J. Hatchett); "Judicial Independence in United States Government" (J. Patrick); "Judicial Independence Resources and Websites"; "Short Takes"; "The Invaders: A Constitutional Rights Activity"; "The Florida Courts and the Judiciary: A Constitutional Scavenger Hunt"; "An Independent Judiciary"; "Judicial Decisionmaking and the Constitution"; "Judicial Discipline and Accountability"; "Should Judges Be Elected or Appointed through a Merit Selection Process?"; and "Town Hall Forum: Judicial Independence." Appended are: "Code of Judicial Conduct"; "Florida Courts"; "Florida Trial Court"; "Florida Supreme Court"; "United States Federal Courts"; "Federal and State Judges Chart." (BT)

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Judicial Independence: Understanding the Courts and the Constitution.

Florida Law Related Education Association, Tallahassee.
League of Women Voters, Tallahassee
Florida Lawyers Association for the Maintenance of Excellence, Tallahassee
Lawyers of Florida, Tallahassee
Florida Bar Foundation, Tallahassee.

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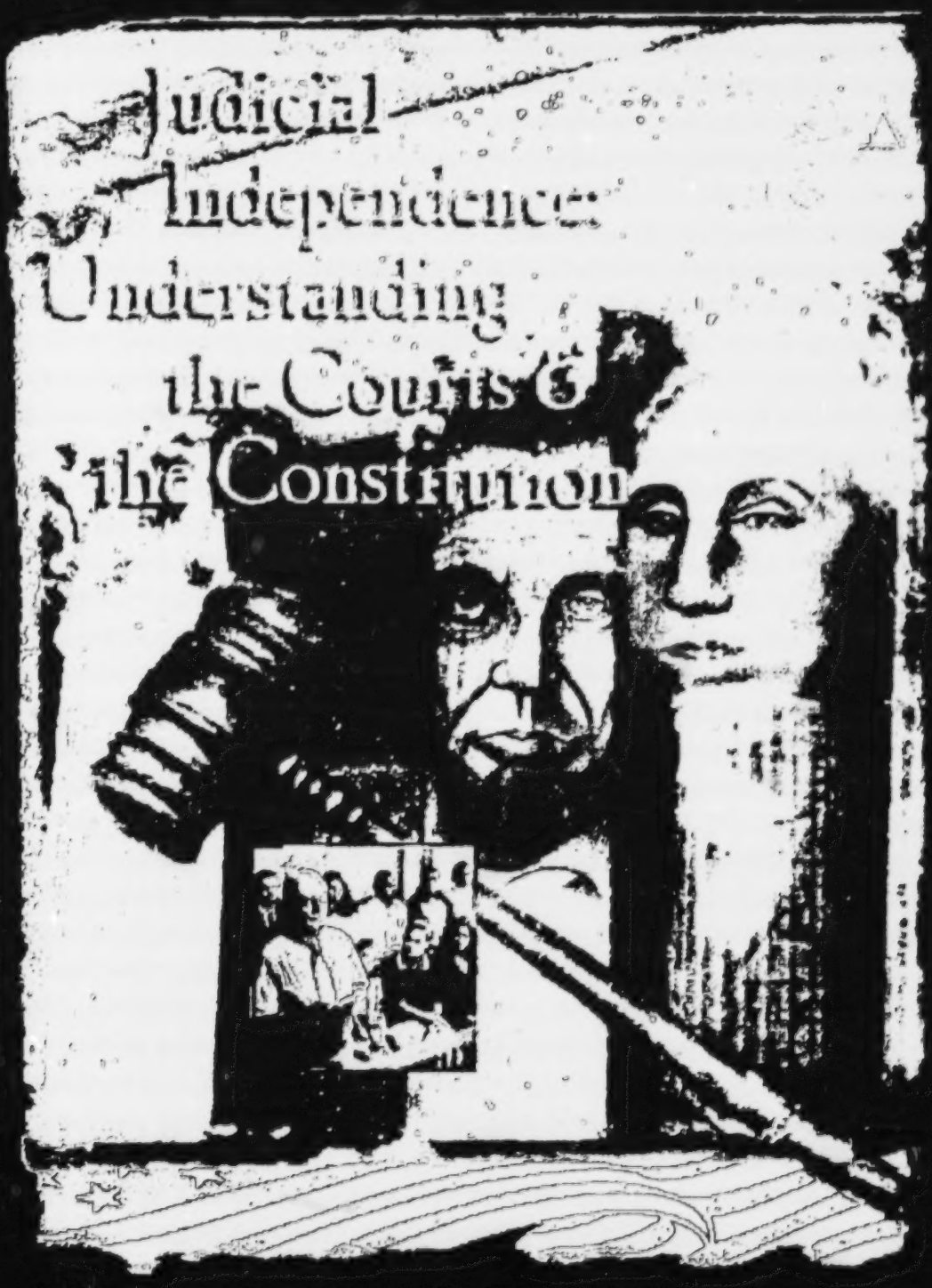

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and commissioned by the League of Women Voters/Tallahassee.
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JUDICIAL INDEPENDENCE: UNDERSTANDING THE COURTS AND THE CONSTITUTION

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INTRODUCTION

"Judicial independence is the 'crown jewel of the federal judiciary'."
Chief Justice William Rehnquist
Federal Judges Association Fifth Quadrennial Conference

This guide contains easy to use step-by-step instructions and materials designed for use in a variety of learning environments such as secondary classroom use, civic meetings and town hall forums. These materials were gathered and the curriculum written as a result of the Judicial Independence Project described below and in more detail at http://users.yourvillage.com/jip. Research in the field and references for further reading are also included.

All the sitting judges in Florida were afforded the opportunity to be surveyed anonymously by the League of Women Voters/Tallahassee to determine the judges' perceptions of their own independence. Ten percent chose to respond and their replies and, in some case, the narrative replies were quite telling.

We make no pretense at this being a scientific survey. The survey is what it is - an opportunity for the "silent branch" of government, the judiciary, to have a say.

This curriculum is available at the website for download in whole or in part. Permission is given to use these materials with attribution to the League of Women Voters/Tallahassee and corresponding authors.

In these increasingly uncertain times, it becomes ever more urgent that citizens understand the processes and protections provided by the framers of the United States Constitution. They created three equal and independent yet interdependent branches of government to serve the citizenry, with the final protection of the individual being the responsibility of the courts.

The League of Women Voters/Tallahassee responded to an opportunity to research the concerns of Florida's judiciary following the disrupted general election of 2000. It received a grant for the Judicial Independence Project, a project supported by a grant from the Program on Law & Society of the Open Society Institute, from the League of Women Voters Education Fund in early 2001.

The basic survey instrument was provided by the League of Women Voters Education Fund and tailored to reflect Florida's unique situation. This curriculum was developed by The Florida Law Related Education Association, Inc. It incorporates the concerns of our judiciary expressed in the survey responses and is intended for use in secondary schools as well as in adult forums, workshops and a variety of group meeting formats.

Most judges who responded to the survey believe the independence of the Florida judiciary is threatened. The lack of awareness on the part of the public, the failure of the media to provide anything but sound bytes of court proceedings and the lack of required civics education in Florida were given as factors. This leaves people apathetic about the three branches of government and their roles in a democratic society. Repeatedly, judges cited "Education! Education! Education!" as the solution to the resultant problems. To that end we have provided this curriculum with assistance from other concerned organizations.

The League of Women Voters/Tallahassee is grateful to Annette Boyd Pitts, Executive Director of The Florida Law Related Education Association, Inc. for her professional and dedicated commitment to excellence in her work. Additionally, we would like to thank our partner organizations for their support in the survey phase of the Judicial Independence Project and in this, the most important phase, education. More than ever, we must remember, as Wendell Phillips exhorted us: "Eternal vigilance is the price of liberty."

Contributors to Judicial Independence Project:

- Academy of Florida Trial Lawyers
- YourVillage.com
- Florida Lawyers Association for the Maintenance of Excellence
- The Florida Bar

Supporters:

- League of Women Voters Education Fund
- American Association of University Women/Tallahassee

Mimi G. Jones, Project Director, League of Women Voters/Tallahassee. The League of Women Voters is a non-partisan organization dedicated to encouraging the informed and active participation of all citizens in their government at all levels. For more information about League of Women Voters in the state of Florida, call **1-800-366-0889** toll-free. For Tallahassee area information, call **850-309-3005**. You may also visit **www.naples.net/presents/lwvf/** or **www.lwv.org/**.

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F O R W A R D

"If citizens have respect for the work of their courts, their respect for law will survive the shortcomings of every other branch of government; but if they lose their respect for the work of the courts, their respect for law and order will vanish with it. . ."
— Arthur T. Vanderbilt

These activities and resources were designed by The Florida Law Related Education Association, Inc. to help participants understand the role of the courts and the concept of judicial independence. A variety of audiences, ranging from students to adults, may be exposed to these materials. The "lesson" format has been altered to make these activities more user-friendly for multiple audiences. Teachers may wish to contact The Florida Law Related Education Association, Inc. for lessons designed specifically for Florida students. Judicial independence is included in Florida's Sunshine State Standards.

The websites listed provide a wealth of resources for a variety of audiences. You will find talking points, op-ed pieces, and sites to assist with further research.

The activities were designed to help Florida students and adults "experience" the role of judges, understand the judicial decisionmaking process, explore judicial accountability and discipline, and determine threats to judicial independence. When conducting these activities, it is important to involve well-prepared, knowledgeable resource persons. Share the activity with the resource person and discuss the audience in advance of your presentation. It is important to find a resource person/facilitator who is balanced and neutral in presenting the issues so that one position is not emphasized necessarily over another.

The Florida Law Related Education Association, Inc. appreciates the leadership of the League of Women Voters/Tallahassee in commissioning the development of these educational materials.

For additional materials or assistance with implementation, you may contact the author directly.

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KEEPING THE JUDICIARY STRONG

BY JOSEPH W. HATCHETT • AKERMAN SENTERFITT & EIDSON

As I consider the state of the judiciary, three recent events come to mind. First, several years ago a Governor of Alabama stated to the media that Alabama's legislature and governor should be able to override decisions that state's supreme court rendered. Second, a justice of the Supreme Court of Tennessee left office in a retention election that developed into a referendum on the death penalty. Third, and you can read about this in the newspaper on almost any given day, members of the Congress are proposing that "activist" federal judges be removed from office. Why should these judges be removed? Because in the eyes of these members of Congress, the judges have rendered decisions (actually, usually only one decision) that indicate that they no longer serve in "good behavior," as defined in the Constitution. Accordingly, and as these events indicate, more and more judges are being attacked for participating in decisions, that is, for doing their jobs. Again, in most instances, judges are assailed for their judgment in a single decision. Additionally, almost always the critics fail to say very much, if anything, about the facts of the case, the positions of the parties, the legal principles that the judges had to apply, any actions of other participating judges, or the dispositions of the case on appeal. Concerning the three events I have recounted, fair-minded observers have concluded that the criticism at issue was not justified.

It is the principle of judicial independence that has made the American judiciary a model for other nations. I can testify to this fact from firsthand experience. In 1992, through the sponsorship of the Central and Eastern European Law Initiative, a program of the American Bar Association, I visited Romania just after it had turned away from communism, to discuss with Romanian court officials, including the Minister of Justice, the establishment of a school for judges and prosecutors. During our discussions, I learned that the Romanian judges were interested in many aspects of the American judicial system, but more than anything else, they were interested in (1) our jury system and (2) the principle of judicial independence. Although most of the Romanian judges had never traveled to the United States, through their study of American jurisprudence they had become impressed that our system enables judges to rule autonomously on questions of law without fear of reprisal. Other international law observers and scholars have noted the movement in the countries of the developing world toward systems incorporating an independent judiciary.

Lest I be misunderstood, I emphasize that courts should be criticized. Judges should be criticized. Criticism plays an important role in keeping our courts rigorous and professional. Citizens should ask questions about the courts. They should inquire whether a particular decision is correct. They should question what the Constitution requires or provides in a specific situation. If a court decides a matter based on statutory interpretation, citizens should become involved and investigate whether and how the relevant legislative body should respond. In short, it is not my position that courts should be free from all criticism.

Instead, it is my position that the criticism of judges that comes from public officials should be responsible and fair. These officials understand the role that courts play in our state and federal governments; they realize that a judge's role is vastly different from that of a legislative or executive official. Therefore, I believe, those officials have a responsibility to foster an accurate understanding of the judiciary's role amongst our citizenry. It is crucial that our citizens understand that courts have the duty to protect the rights of minorities – political, racial, or ethnic. Citizens should comprehend that the First Amendment right to articulate political views, no matter if from the radical right or the radical left, and no matter how distasteful, must be protected. Likewise, citizens must understand that the right of even the most unpalatable among us to a fair trial lies at the very foundation of our system of justice.

The criticism that public officials have lodged recently against courts and judges has, for the most part, not been responsible, fair or productive. It has painted the world and the law in overly simplistic, broad strokes and ignored the principles and competing rights and values inevitably present in any judicial decision. In other words, much of this criticism has amounted to nothing more than demagoguery. You've heard it before: a decision favorable to an accused in a criminal case indicates that the judge approves of the criminal conduct alleged in the charging instrument; or, if a judge exacts a sentence under a sentencing guidelines scheme that is not the most severe that could be imposed it means that the judge is not sympathetic to the victims of criminal acts. Recently of course, a federal trial judge's decision became the subject of debate during a presidential campaign; because the judge suppressed drug evidence under the Fourth Amendment, he was charged with "coddling criminals."

It is wrong for those who criticize judges to state that only results – without consideration of legal principles applied to particular facts – matter. For public officials to do so is irresponsible and insupportable. It is wrong for public officials to seek to remove a judge from office for the sole purpose of having their political party appoint a replacement judge. It is wrong for public officials to assail an individual judge in an effort to intimidate the other judges on the bench. It is wrong to seek to impeach judges based upon a single opinion and the label "activist."

Our courts must continue to retain judicial independence. Courts are not independent when state judges are voted out of office because of one unpopular decision or when federal judges are induced to resign after enduring distorted and weathering criticism.

KEEPING THE JUDICIARY STRONG

The Florida Supreme Court and all the courts of Florida must go on as independent units in a state government of co-equal branches. The Supreme Court of Florida must go on changing the course of the history of Florida as it did in the long saga of Virgil Hawkins v. The Board of Control. Our courts must ignore misguided "single shot" criticism or even attempts to remove the judicial budget from the judiciary's control.

The Supreme Court of Florida has a record of issuing landmark decisions that have changed citizens' lives for the better. In Traylor v. State, 596 So. 2d 957, 963-64 (Fla. 1992), this court discussed the role of the Florida Constitution - and, therefore, the Florida Supreme Court - in protecting Floridians against state power. I quote:

> Special vigilance is required where the fundamental rights of Florida citizens suspected of wrongdoing are concerned, for here society has a strong natural inclination to relinquish incrementally the hard-won and stoutly defended freedoms enumerated in our Declaration in its effort to preserve public order. Each law-abiding member of society is inclined to strike out at crime reflexively by constricting the constitutional rights of all citizens in order to limit those of the suspect – each is inclined to give up a degree of his or her own protection from gove: .ment intrusion in order to permit greater intrusion into the life of the suspect. The framers of our Constitution, however, deliberately rejected the short-term solution in favor of a fairer, more structured system of criminal justice:
>
> > These rights [enumerated in the Declaration of Rights] curtail and restrain the power of the State. It is more important to preserve them, even though at times a guilty man may go free, than it is to obtain a conviction by ignoring or violating them. The end does not justify the means. Might is not always right. Under our system of constitutional government, the State should not set the example of violating fundamental rights guaranteed by the Constitution to all citizens in order to obtain a conviction.
>
> Bizzell v. State, 71 So. 2d 735, 758 (Fla. 1954). Thus, even here - especially here -where the rights of those suspected of wrongdoing are concerned, the framers drew a bright line and said to government, "Thus far shalt thou come, but no farther."

A good example of the Florida Supreme Court's going further in this area is State v. Neil, 457 So. 2d 481 (Fla 1984). Rejecting the strictures of Swain v. Alabama, 380 U.S. 202 (1965), the Florida Supreme Court required prosecutors to explain the basis for peremptory challenges when it appeared likely that prospective jurors had been challenged solely on account of their race. The Court's action preceded the United States Supreme Court's decision in Batson v. Kentucky by two years.

So, the Supreme Court of Florida has the proud history of serving the people of Florida for more than 150 years. We must celebrate the great history of Florida's highest court and all the courts of Florida. It is right that we celebrate. But, what comes after the celebration? What do we do to continue the best traditions of our courts? First, as judges, public officials, and citizens we must continue to follow and assess our courts and all public institutions. But when criticism of our courts is unjust, some one must "tell the rest of the story." Someone must point out how the role of a judge is different from the role of a legislator or an executive branch official; someone must articulate the legal principles, precedent, and facts involved; someone must accurately assess and voice where the ruling fits on the legal landscape; someone must place the ruling in the broader context of a career.

Who is this "someone" to whom I refer? This "someone" is a responsible public official or a member of the bar who comes forward and responds to irresponsible attacks on judges and courts. The bar, public officials, and "people in the know" must be ever ready to engage themselves in these controversies. We must never forget that judges stand at the epicenter of turmoil as we, the sovereign, shift our goals, our aims, and our aspirations.

"We the people" are the first words of the Preamble to the Florida Constitution as well as the first words of the Preamble to the United States Constitution. Both documents speak of "we the people" as a sovereign. The sovereign is not you. It is not me. The sovereign is all of us. The individual in our society needs protection from the sovereign – all of us. Realizing that the individual in our society needs protections, the Florida Constitution as well as our national Constitution has placed limitations upon ourselves. Think of these limitations: a felon goes free unless we can deny the felon freedom after providing due process of law; although we are fairly sure that a cocaine dealer is preparing contraband in a house in our neighborhood, we cannot enter unless we can establish probable cause; we can argue the existence of a "true religion," but we can't make that true religion the nation's religion.

"We the people" sometimes do not always like the limitations that we have placed upon ourselves. We may not like the idea that drug dealers have many protections and liberties; we may not like demonstrations, sit-ins, and marches through our peaceful neighborhoods; we may not like public officials refusing to answer questions about their activities involving public business as they quote from the Fifth Amendment.

But, at bottom, someone, some group of people, some institution, must see to the guarantees of equal justice, due process, religious freedom, freedom of speech and other of our rights, even when doing so requires encountering hostility, even rage, from those who would preserve unconstitutional schools, voting practices, jury boxes, mental health facilities, prisons and other practices, institutions and traditions. That someone is the judicial officer; the institutions are the courts. So, judges and courts will always be at the very center of turmoil as our states and nation change.

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I hasten to add that we the sovereign did not always view our rights in the same manner. Indeed, we once waged war against ourselves. Although we have not viewed our rights the same way for all of the years of this country's existence, any historian or observer would have to conclude that Florida's courts are not only on the right track now, but are doing exceptionally well in applying the statutory law of this state, interpreting the state and national constitutions, and, ultimately, protecting the rights of citizens.

We must be especially vigilant in this period – the aftermath of the horrific attacks of September 11, 2001. We must "bring to the bar of justice" those responsible for such unbelievable death and destruction. They must be punished NOW. But, in our haste to capture and punish, we must realize that unless we preserve constitutional safeguards for savage wrongdoers, we do not preserve them for future generations and ourselves.

In the prosecution of the terrorists, courts and judges are sure to be attacked. Attacked because judges will insist upon a real and narrow definition of "terrorist"; judges will insist upon "probable cause" in support of search warrants; judges will insist that the dictates of the Constitution be obeyed. The judge will exercise judicial independence. We must be willing to stand beside the judges and the courts when the passions of revenge and disgust cause us to want to ignore constitutional limitations on our freedom to act.

Has judicial independence really been of benefit to this state and nation? How far have we, as a state and a nation, come under a system based on judicial independence? I'll tell you how far. The case of Stewart v. Preston was decided in the January term of 1846 by a Supreme Court of Florida consisting of three circuit judges. The case involved jurisdictional issues surrounding the foreclosure of a mortgage on property. The property involved was a slave.

We have come from the date of that decision, January 6, 1846, to today, when the grandson of slaves owned and kept in Alachua County, the son of a fruit picker and maid in Pinellas County, can address you as the past Chief Judge of America's busiest federal circuit court, headquartered in the heart of the old confederacy, and speak to you as a former justice of the Florida Supreme Court. That is an example of how far we have come. Yes, Congress and the Executive Branch had something to do with this change, but independent judges serving on independent courts of this state and this nation, applying the concepts contained in our most vital public documents, must receive most of the praise. We have come a long way.

The good news is that the courts of Florida are performing well. The other news is that 50 years from today as society's standards evolve, as we the sovereign change our collective minds about standards of decency, the courts of Florida will be just what they should be - in the middle of the "legal storms" of those times. To survive those storms of change, all our courts must be free to hear, to consider, to apply legal precedent and to decide issues, without fear of reprisal. Stay strong, great courts.

Joseph W. Hatchett, Florida's 65th justice, was born in Clearwater. He was the first African American to serve on the Florida Supreme Court. He was appointed by Governor Reubin Askew. In 1979, Hatchett was appointed to the federal appeals court. He has retired from the bench and works for the law firm Akerman Senterfitt & Eidson. This document was adapted from a speech delivered by Judge Hatchett during the 150th anniversary program for the Supreme Court of Florida.

JUDICIAL INDEPENDENCE IN UNITED STATES GOVERNMENT

BY JOHN J. PATRICK

Judicial independence is a basic idea in United States government. During the founding era, Alexander Hamilton wrote, "The complete independence of the courts of justice is peculiarly essential in a limited constitution" (The Federalist 78). What is judicial independence? Why did Hamilton praise it? Why has it been a key to good government in America from the founding era until today?

Judicial independence is the capacity of judges and the judicial branch as a whole to exercise the judicial power fairly in freedom from improper political pressures or influences. Thus, an independent judiciary can make decisions in specific cases that are based solely on the facts and applicable law and not in response to partisan pressures or public opinion. In addition, judicial independence refers to the constitutional separation of the judicial branch from the executive and legislative branches of government.

The idea of judicial independence in United States government cannot be understood apart from the principles and ideals of government proclaimed during the founding of the republic. It is connected to ideals about individual rights and to such principles of constitutional design as (1) separation of powers and (2) checks and balances. So a definition and justification for judicial independence will be presented within the context of the following discussion of founding-era values and principles.

SEPARATION OF POWERS WITH CHECKS AND BALANCES

America's founding documents proclaimed that security for rights is a primary aim of good government. According to the Declaration of Independence, "Governments are instituted" to "secure" or protect the "unalienable Rights" of individuals to "Life, Liberty, and the Pursuit of Happiness." The United States Constitution and the constitutions of the 50 states are designed to fulfill the founding ideal of protecting individual rights through the rule of law. The Preamble to the Florida Constitution, for example, recognizes the value of "constitutional liberty" and promises to "guarantee equal civil and political rights to all..."

One constitutional means to liberty under law is checks and balances among three coordinate branches of government - legislative, executive, and judicial – whose primary powers and functions are separated from one another. The framers of the United States Constitution recognized that, "The accumulation of all powers, legislative, executive, and judicial, in the same hands...may justly be pronounced the very definition of tyranny." They understood that "the preservation of liberty requires that the three great departments of government should be separate and distinct" (The Federalist 47). However, the Framers also knew that the three branches of government should not be separated to the extent that they had no constitutional checks or controls over each other. Rather, they designed the federal government so that the three branches would "by their mutual relations be the means of keeping each other in their proper places" (The Federalist 51). Thus, each separate branch of government was enabled to share in the powers of the other two so that each one could check or limit the powers of the other two branches.

The conjoined principles – separation of powers with checks and balances – are exemplified by Article I, II, and III of the United States Constitution, which specify the powers and duties of the legislative, executive, and judicial branches of government. For example, Congress has the legislative or law-making power. The President and the executive branch carry out and enforce the laws. The Supreme Court and inferior federal courts have the judicial power, which involves interpretation of the law in specific cases. The President, however, can check Congress by vetoing or refusing to approve proposed legislation. In turn, the Congress can override an executive veto by a two-thirds vote. Further, presidential appointments to executive departments and to the federal courts require approval by the Senate. And the federal judiciary can use its power of judicial review to invalidate unconstitutional acts of the other two branches.

Likewise, the Florida Constitution provides for the separation and checking of powers in Articles III, IV, and V. And for emphasis, Article II, Section 3 declares, "The powers of the state government shall be divided into legislative, executive, and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

The main point of separation of powers with checks and balances is prevention of tyranny and fulfillment of the Declaration of Independence's directive that the primary purpose of good government is equal protection through law of individual rights. Alexander Hamilton, James Madison, and other American founders especially feared a tyranny of the majority, which was a peculiar threat to individual rights in a government based on the consent and will of the people. If not effectively checked, a majority of the people could exercise tyranny over unpopular minorities through their popularly elected representatives in government. Among the founders' constitutional designs to prevent any kind of tyranny was an independent judiciary within a system of separated powers with checks and balances in government. Hamilton wrote, "The independence of the judges is... requisite

JUDICIAL INDEPENDENCE IN UNITED STATES GOVERNMENT

to guard the Constitution and the rights of individuals" (The Federalist 78).

POWERS AND DUTIES OF AN INDEPENDENT JUDICIARY

In both the U.S. Constitution (Article III) and the Florida Constitution (Article V), the judicial power is vested in a supreme court and lower courts. These courts can hear and decide cases brought before them in terms of the supreme law, the Constitution. The United States Supreme Court, for example, interprets the law to make decisions in controversies that adversaries bring to the Court.

Article III, Section 2, of the U.S. Constitution says that the judicial power of the federal courts can be exercised in two categories of cases: cases defined by the parties to the controversy and cases defined by their substance. The first category includes legal disputes in which the United States is a party, in which the opposing parties are different states of the federal system, or in which the parties are citizens of different states. The second category includes cases about the meaning or application of provisions of the Constitution, federal statutes, or treaties.

Judicial review, although not mentioned in the Constitution, has become an important power of the federal judiciary. Judicial review is the power of a court to declare an act of the federal or state government unconstitutional, or unlawful and void. According to this concept, judges in courts of law appraise acts of the legislative and executive branches of federal and state governments to decide whether they are in conflict with the Constitution. All courts, federal and state, may practice judicial review. The Supreme Court of the United States, however, has final say within the judicial system on whether laws or actions violate or are in accord with the U.S. Constitution.

The judicial power, including the power of judicial review, is one of three coordinate and separate powers of government in the United States: legislative, executive, and judicial. Chief Justice John Marshall, in Osborn v. Bank of the United States (1824), summarized the relationships of the three branches of government: "[T]he legislative, executive, and judicial powers, of every well constructed government, are co-extensive with each other… The executive department may constitutionally execute every law which the Legislative may constitutionally make, and the judicial department [has]…the power of constructing every such law." As Marshall wrote in Marbury v. Madison (1803), "It is emphatically, the province and duty of the judicial department, to say what the law is."

Judicial independence is the capacity of judges and the judicial branch as a whole to exercise the judicial power fairly in freedom from improper political pressures or influences. Thus, an independent judiciary can make decisions in specific cases that are based solely on the facts and applicable law and not in response to partisan pressures or public opinion. In addition, judicial independence refers to the constitutional separation of the judicial branch from the executive and legislative branches of government.

The independence of the federal judicial branch is based on the insulation of its members, once appointed and confirmed in their positions, from punitive actions by the legislative and executive branches. According to Article III of the U.S. Constitution, federal judges may hold their positions "during good Behavior"; in effect, they have lifetime appointments as long as they satisfy the ethical and legal standards of their judicial offices. Furthermore, Article III provides that the legislative and executive branches may not combine to punish federal judges by decreasing payments for their services. The intention of these constitutional provisions is to guard the federal judges against undue influence from the legislative and executive branches in the exercise of their judicial power.

Judicial independence means that judges can interpret the law and decide cases impartially. They need not fear punishment for ruling against powerful or popular persons or causes. Rather, they are free to do what in their judgment is fair and just. Thus, the people can trust the judicial branch of government and have confidence that justice will be done by the federal and state courts.

THREATS TO JUDICIAL INDEPENDENCE

Despite constitutional safeguards for judicial independence, there are ongoing threats to it. For example, a judge's independence is at risk when the threat of impeachment is made in response to an unpopular decision. Impeachment is properly used to remove judges from office for specific criminal acts. It is not a remedy to correct erroneous or unwise decisions. And judicial independence is undermined when judges fear impeachment as punishment for legally correct but politically unpopular decisions.

A second threat to judicial independence is irresponsible public criticism aimed at influencing particular judges by political pressure or intimidation. Attempts to turn public opinion against a judge are especially threatening in states where judges are elected by voters or are subject periodically to approval or rejection by the electorate.

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Other threats to judicial independence may come from the legislative branch whenever most members are upset with the trend of judicial decisions. For example, the legislators may try to pressure judges by not approving judicial salary increases to meet rising costs of living. The legislature may also withhold funding from the judicial branch and thereby impede or prevent hiring of new staff or other actions needed to cope with annual increases in cases and workloads.

PUBLIC RESPONSIBILITY FOR GOOD GOVERNMENT

Responsible citizens must oppose threats to judicial independence or other basic principles of United States constitutional government. If not, the constitutional safeguards of individual rights and liberties will be at risk. Thus, citizens should refrain from actions that would compromise or weaken judicial independence; and they ought to oppose those who would subvert it.

When citizens support the American tradition of judicial independence, they act to protect their rights to liberty under law. Long ago, James Madison predicted in a speech to Congress (June 8, 1789) that "independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the constitution..." And so it has been, especially during the twentieth century, when federal and state judges struck down hundreds of unconstitutional acts by coordinate branches of government to secure the rights of individuals. And so it will continue to be, if responsible citizens will be vigilant guardians of judicial independence, an indispensable instrument of liberty under law.

John J. Patrick is a Professor of Education in the School of Education of Indiana University, Bloomington, where he is also the Director of the Social Studies Development Center and Director of the ERIC Clearinghouse for Social Studies/Social Science Education. He serves as a visiting scholar for regional and national summer study programs on the U.S. Constitution and Bill of Rights.

JUDICIAL INDEPENDENCE RESOURCES AND WEBSITES

The following websites will provide you with a wealth of information and resources in your study of judicial independence.

The Constitution Project:
www.constitutionproject.org/newtoolbox/index.html
A bipartisan nonprofit organization that seeks consensus on controversial legal and constitutional issues. Its Courts Initiative conducts public education on judicial independence. Visit the Independent Courts toolbox to find op-ed pieces and speeches.

Brennan Center for Justice: www.brennancenter.org
Located at NYU School of Law, the Brennan Center develops and implements a nonpartisan agenda that promotes equality and human dignity, while safeguarding fundamental freedoms. The Judicial Independence Project combats threats to the independence of the judiciary. Go to the Democracy section and click on Judicial Independence.

American Judicature Society: www.ajs.org
The American Judicature Society works to maintain the independence and integrity of the courts and increase public understanding of the justice system. The Center for Judicial Independence provides information and materials to educate the public on judicial independence issues. Free "I Support Judicial Independence" buttons. Go to **www.ajs.org/cji/index.html**

Alliance for Justice: www.IndependentJudiciary.com
New website featuring an interactive tour of the judicial selection process for the federal courts. An interactive "You be the Judge" game is also on-line. The Alliance for Justice monitors federal judicial nominations and encourages public participation in the confirmation process.

The American Bar Association: www.abanet.org
The American Bar Association's website provides public education resources and materials on judicial independence. Provides speech ideas and talking points on the independence of the judiciary.
www.abanet.org/publiced/lawday/talking/judicial_main.html

National Constitution Center:
www.constitutioncenter.org
Established by Congress as an independent, nonpartisan, nonprofit organization to increase awareness and understanding of the U.S. Constitution. Provides weekly updated resources for teachers and the public.

The Florida Bar: www.flabar.org
This website is sponsored by The Florida Bar to serve its 69,741 members, the legal profession, and the public.

Justice at Stake: www.justiceatstake.org
A national partnership working for fair and impartial courts.

The Florida Legislature: www.leg.state.fl.us
This site provides access to all bills filed in the Florida legislature.

The Avalon Project:
www.yale.edu/lawweb/avalon/avalon.html
This site provides a compilation of official digital documents.

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SHORT TAKES

So, you have been asked to present a session on the courts and the Constitution and they've only given you 30 minutes? Or perhaps, you want an opening to start off a longer presentation. These "short takes" can be used as "icebreaker" activities or as stand alone presentations, depending on the time allotted for your engagement. The short takes that follow are useful when discussing the courts and the judiciary.

You will find these "short takes" integrated into many of the activities featured throughout these materials.

EACH ONE, TEACH MANY

This strategy is a variation of the Each One Teach One activity. It is designed to stimulate interest when introducing an unfamiliar subject. Participants share information about a specific topic with other participants.

In this specific activity, cut out fact strips from Article V of the Florida Constitution and the Code of Judicial Conduct for State Court judges. Attachment A provides a variety of fact strips. You can also make your own.

Provide one fact strip for each participant. Distribute individually and have each participant silently read his/her assigned fact. Then, have each participant circulate and share his/her fact with one person at a time until they have spoken with at least five people with different facts, preferably individuals they do not know.

Participants should talk with only one person at a time. The object is to share a fact and learn a new fact from another participant until you have shared with at least five other persons.

After approximately 15 minutes, the facilitator should begin asking the full group to share some of the facts they learned. This will generate further interest in specific topics that may become the focus of future presentations. The facilitator or resource person conducting the debrief should have an understanding of Article V, the Code of Judicial Conduct, and related subjects.

As a comparative study, the same exercise can be done using the U.S. Constitution and focusing on the federal courts.

Adapted from Each One Teach One, *Street Law* series 1998.

JUDICIAL BINGO

This exercise helps participants think about the knowledge, skills, and attributes of an effective judge. The facilitator should begin the activity by asking participants to think about what it takes to be a good judge. Have participants classify their thoughts according to knowledge, skills, and qualities. Then using Attachment B, participants should list (one per box) the knowledge, skills, and qualities they feel are most important. After approximately 10-15 minutes, the facilitator should ask participants to circulate throughout the room and mark off a box each time they find a match. Insert the name of the person in the box of the word you matched. They should circulate and review their charts with as many people as possible until they have three in a row like bingo or tic-tac-toe. As soon as anyone has accomplished this, they should shout Bingo and come to the front of the room. Have the first five people that shout Bingo come to the front to report what words they matched.

As each person reports, the facilitator should enter the word on one of three chart papers titled Knowledge, Skills, and Qualities. Have the audience help decide where each word belongs. After all five reporters have finished; seek out other words from the full audience not mentioned by the five reporters. Enter these on the charts as well.

Debrief by reviewing the knowledge, skills, and attributes chosen by the audience. Tie into the Code of Judicial Conduct (see appendices). This is good starter to use with the election/merit selection activity as well as the judicial discipline and accountability activity.

The terms of Florida circuit and county court judges shall be for six years.

Florida Constitution
Article V, Section 10 b(3c)

Justices and judges shall devote full time to their judicial duties. They shall not engage in the practice of law or hold office in any political party.

Florida Constitution
Article V, Section 13

All justices and judges shall be compensated only by state salaries fixed by general law.

Florida Constitution
Article V, Section 14

Article V of the Florida Constitution establishes the judicial power of the state courts.

Florida courts include a Supreme Court, district courts of appeal, circuit courts, and county courts.

Florida Constitution
Article V, Section 1

The Supreme Court of Florida shall consist of seven justices.

Florida Constitution
Article V, Section 3

ATTACHMENT A: FACT STRIPS

The Supreme Court of Florida shall hear appeals from final judgments of trial courts imposing the death penalty.

Florida Constitution
Article V, Section 3b (1)

No justice or judge shall serve after attaining the age of 70 years except upon temporary assignment or to complete a term, one-half of which has been served.

Florida Constitution
Article V, Section 8

Judges in Florida may be subject to reprimand, fines, suspensions, or even removal from office for certain conduct.

Florida Constitution
Article V, Section 12

A judicial qualifications commission is vested with the jurisdiction to investigate and recommend to the Supreme Court of Florida the removal from office of any justice or judge whose conduct demonstrates a present unfitness to hold office or warrants such discipline.

Florida Constitution
Article V, Section 12

Add additional facts from
Article V of the Florida Constitution,
the Code of Judicial Conduct,
or other relevant documents.

ATTACHMENT B: JUDICIAL BINGO

Insert the knowledge, skills, or qualities you feel are most important for judges. Please put only one word in each box.

The facilitator will indicate when to begin circulating around the room.
Talk with others individually to find matching words.
X through each matching word and insert the name of the person who had the matching words.
When you have three matches in a row (like bingo or tic- tac-toe) shout "Bingo!" and report to the front of the room.

This activity was developed by Annette Boyd Pitts, Executive Director of The Florida Law Related Education Association, Inc.
For additional information, please visit our website at www.flrea.org.

THE • INVADERS: A CONSTITUTIONAL • RIGHTS • ACTIVITY

OVERVIEW

The Invaders activity is designed to introduce participants to the rights guaranteed under the U. S. Constitution. Using a hypothetical scenario, participants evaluate the importance of rights.

OBJECTIVES

- Develop individual decision-making skills;
- Analyze and evaluate rights as listed in the U.S. Constitution;
- Develop consensus-building skills;
- Understand how our rights are interrelated; and
- Understand how the courts protect our rights.

MATERIALS NEEDED

- Handouts A and B
- Overhead Projector

TIME REQUIRED

- One hour

PROCEDURES

1. Ask participants, "What is a right?" Have participants respond verbally.
2. Ask participants where our rights are listed (U.S. Constitution, Florida Constitution).
3. Ask participants what the first 10 amendments to the U.S. Constitution are called (Bill of Rights). Distribute copies. See Handout B.
4. Distribute Handout A. Review each right listed. These are some, but not all, of the Bill of Rights. Elicit discussion from participants about the meaning of each right and which amendment the right is listed in. Add to what the participants mention bringing in historical and contemporary issues. Use a Socratic dialogue format.
5. Tell participants that their lives are about to change. It is the year 2020 and they are living happy, productive lives. They turn on their televisions to hear a news report that our country is being invaded. The invaders feel we have too many rights in this country that we don't even appreciate. They are demanding that we decide which rights we will give up.
6. Using the handout, each participant must select 5 rights they want to keep by checking off the blank next to the right. If they choose not to do this task, the invaders will select the rights to keep. The participants should make their own individual decisions.
7. Then put participants in groups of five and have each group come to a consensus as a group on which 5 rights they would keep. Each group will make a decision for the entire country. Give the participants 15-20 minutes at least to reach their decision.
8. Have a spokesperson from each group report on their group's decision. The teacher or resource person should tally responses on an overhead.
9. Debrief to balance out the importance of the rights which were not selected.
10. Using a judge as a resource person, discuss with participants how the courts protect our constitutional rights. Discuss current and historical cases before the U.S. and Florida Supreme courts. Determine the constitutional issues which are/were being reviewed. What role do the courts play in protecting our rights?

NOTE: The same activity can be done using the Florida Constitution.

ATTACHMENTS

- Handout A – Our Rights
- Handout B – The Bill of Rights

Adapted from the Constitutional Rights Foundation Chicago publication *Working Together: We the People.*

HANDOUT A: OUR RIGHTS UNDER THE CONSTITUTION

_____ Freedom of speech

_____ Right to bear arms

_____ Right to legal counsel

_____ Right to protection from cruel and unusual punishment

_____ Freedom of press

_____ Right to jury trial

_____ Freedom of religion

_____ Right to peaceably assemble

_____ Protection from self-incrimination (testifying against oneself in a criminal trial)

_____ Right to protection from unreasonable searches and seizures

HANDOUT B: BILL OF RIGHTS

Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

Amendment II.

A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Amendment IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Amendment X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Ratified December, 1791

FLORIDA COURTS AND THE JUDICIARY: A CONSTITUTIONAL SCAVENGER HUNT

OVERVIEW

This activity will help participants become familiar with the Florida Constitution and corresponding provisions for the state courts system.

OBJECTIVES

- Familiarize participants with the Florida Constitution;
- Examine the structure and function of the state courts; and
- Determine the jurisdiction of the state courts.

MATERIALS NEEDED

- Copies of the Florida Constitution
- Handout: The Florida Courts and the Judiciary: A Constitutional Scavenger Hunt
- Answer Key for Facilitator

TIME REQUIRED

- One hour

PROCEDURES

Divide the audience into groups of five. Give each group the same questions/handout along with copies of the Florida Constitution. Participants should work in groups to answer each question and identify corresponding sections of the Florida Constitution where they found their answers. Allow 25-30 minutes to complete. Reconvene to discuss and debrief. Discuss the purpose of state constitutions and how they differ from the U.S. Constitution.

SCAVANGER HUNT ANSWER KEY FOR FACILITATOR

1. Article V of the Florida Constitution
2. Article V , Section 1
3. Article V , Section 3
4. Article V , Section 3
5. Article V , Section 2
6. Article V , Section 3b
7. Article V , Section 9
8. Article V , Section 8
9. Article V , Section 12a(1)
10. Article V , Section 4a
11. Article V, Section 10
12. Article V, Section 11
13. Article V, Section 12
14. Article V, Section 13
15. Article V, Section 14

Note: Copies of the Florida Constitution can be obtained through the Florida Department of State. To access on-line, visit the Department's website at www.election.dos.state.fl.us.

This activity was developed by Annette Boyd Pitts, Executive Director of The Florida Law Related Education Association, Inc. For additional information, please visit our website at www.flrea.org.

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HANDOUT: A CONSTITUTIONAL SCAVENGER HUNT

1. What Article in the Florida Constitution addresses the judicial branch? _____

2. The Florida Constitution establishes what levels of courts? _____

3. How many justices serve on the Florida Supreme Court? _____

4. How many justices constitute a quorum? _____

5. How is the chief justice of the Florida Supreme Court chosen? _____

6. What cases must be heard by the Florida Supreme Court? _____

7. Who determines the number of judges in Florida? _____

8. Who is eligible to be a judge in Florida? _____

9. Who investigates judicial misconduct in Florida? _____

10. How many judges hear a case in the district court of appeals? _____

11. How are county court judges chosen for office in Florida? _____

12. What happens when there is a vacancy in a judicial office? _____

13. Who does the Judicial Qualifications Commission present its recommendations for disciplinary sanctions to? _____

14. Are judges allowed to engage in the practice of law? _____

15. How are judicial salaries determined? _____

AN INDEPENDENT JUDICIARY

OVERVIEW

Judges must be free to make decisions based on the facts and their interpretation of the law. They must do what is legally right even when it is not popular. Judicial independence is a distinguishing element of our government. It refers to a judge's ability to issue decisions free from the political or public pressures that might prevent them from fairly and impartially enforcing the rights and principles guaranteed by the U.S. Constitution. This activity will explore the necessity of an independent judiciary and examine today's challenges.

OBJECTIVES

- Define judicial independence;
- Evaluate the importance of an independent judiciary in a democratic society; and
- Examine current challenges to an independent judiciary.

TIME NEEDED

- Two hours

MATERIALS NEEDED

- Handout A
- Quotes on Overheads

PROCEDURES

1. Write the words INDEPENDENT JUDICIARY on the board. Ask participants what this means. Add to the their definitions. If nobody recognizes this term, ask participants what they feel are important characteristics of an effective court system? Words like fairness and impartiality will emerge.

2. Tell participants that in the Declaration of Independence, one of the main concerns cited against King George III was:

   "He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries."

3. Put quote on an overhead. Ask participants what this quote means. Why would it be a problem for a King or President or Governor to control how long a judge can serve, how much money they will be paid and when? Why do federal judges serve life terms? If judges are fearful for their jobs or feel they will be punished for unpopular decisions, are they are less likely to be neutral and impartial.

   Alexander Hamilton

   "The Courts were designed to be an intermediate body between the people and the legislature..."

4. Ask participants why is it so important that in our democracy, judges have the authority to declare laws unconstitutional and to enforce the protections granted by the Constitution? Judges often have to review government actions. They must have the independence to rule against the government. Judicial independence means that judges shouldn't be afraid of using their best judgment to interpret the law. Judges should be insulated from political concerns.

5. Ask participants if there are any "checks" on judges. How do we know they are being fair and impartial? Add to participants' responses:

   Judges follow:

   - Constitution (U.S. and State)
   - Statutes/Laws
   - Rules/Procedures
   - Higher Court Decisions
   - Judges' decisions may be appealed to a higher court.

   Additionally, judges' actions are reviewable. Florida judges also must follow the Code of Judicial Conduct. Judges can be sanctioned for misconduct and even removed from the bench.

6. Distribute copies of Handout A – "The Importance of Judicial Independence" (American Judicature Society). Have participants read the article independently.

7. Discuss the article. What are the two positions highlighted?

8. Bring in newspaper articles and editorials highlighting current threats to an independent judiciary. Note: A variety of news articles or editorials may appear throughout the year particularly during legislative session. An example is the editorial published in the *St. Petersburg Times* entitled "An insult to Floridians" published January 25, 2002. Try to find articles with varying views/opinions. Divide participants into groups of five to analyze and discuss the issues in each article which impact the judiciary. Discuss. During legislative

AN INDEPENDENT JUDICIARY

session, review proposed bills that may impact judicial independence.

9. Put large chart papers against one wall, which state Strongly Agree, Agree, Do Not Know, Disagree, and Strongly Disagree. Using a "human graph", ask participants to position themselves by the category they feel most closely aligned when using the following statements (one at a time - then discuss). Ask participants by each category to share their opinions. Discuss and than move on to other scenarios.

   a. Judges should make decisions based on how the public feels about an issue.

   b. The legislature should be able to pass laws without judges declaring them unconstitutional.

   c. Judges represent the rule of law, not the will of the majority.

   d. The President or Governor should be able to fire judges that don't share their same political ideas or agenda.

   e. Citizens and the media should not be able to criticize judges' rulings.

   f. The executive and legislative branches should have more control over the judiciary.

10. Debrief each scenario. End by reiterating what an independent judiciary is and the reason it was important to our founding fathers. Reemphasize that to achieve fair and impartial courts; judges must be able to make decisions without regard to public or political pressures. Additional assignments may include the introductory articles by Joseph Hatchett and Dr. John Patrick in this document.

This activity was developed by Annette Boyd Pitts, Executive Director of The Florida Law Related Education Association, Inc. For additional information, please visit our website at www.flrea.org.

HANDOUT A: THE IMPORTANCE OF JUDICIAL INDEPENDENCE

Do judges have too much power? In recent months, politicians and others have criticized judges for rulings that seem to defy conventional wisdom and the popular will. As a remedy, some have called for the impeachment of federal judges deemed too "activist" and for the popular election of federal judges. Others have called for judicial term limits and for a constitutional amendment that would allow Congress to override Supreme Court decisions by majority vote.

There is nothing new, or even wrong, about criticizing judges for unpopular rulings. Conservative judges have been just as susceptible to condemnation from the left for being "activist" as their liberal counterparts have been from the right.

However, recent attacks go far beyond criticizing individual rulings. Most of these proposals are dangerous because they are aimed at the core of judicial authority itself, the principle of judicial independence. The nation's founders believed that a crucial element of a democratic society was the principle of judicial independence. This power frees judges from the political pressures that might prevent them from impartially enforcing the rights and principles guaranteed by the U.S. Constitution. Furthermore, without this principle, the system of separation of powers and checks and balances among the three branches of government cannot exist.

In the Declaration of Independence, Jefferson protested the fact that King George III "made judges dependent on his will alone." British judges who wanted to keep their jobs lacked the power to rule against the Crown or Parliament. Thus, America's framers codified the concept of judicial independence into the Constitution by granting judges life tenure and providing for salary protection.

Judicial independence means that judges need not fear punishment for using their best judgment to interpret the law. The concept is important because it provides for continuity and stability in our legal system, guaranteeing that disputes can be resolved fairly and impartially. An independent judge does not fear for his or her job or good reputation when ruling against excessive governmental regulation, overzealous law enforcement, or discriminatory policies. Judges who are fearful that they can be punished for unpopular decisions are less likely to be neutral referees in the cases that come before them.

Impeachment is properly used for corrupt judges who commit "high crimes and misdemeanors," not as retaliation for controversial rulings. If the people and their elected representatives do not like a federal judge's decision, they have the right to seek the judge's reversal through appeal to a higher court, new legislation, or constitutional amendment. Another remedy is to vote for like-minded presidents and senators who appoint and confirm judges and Supreme Court justices.

Some contend that independent judges are hostile to representative democracy. Ironically, were it not for the decisions of courageous judges on matters such as voting rights, freedom of expression, and search and seizure, we would not have the free and open society we have today.

Article reprinted from the American Judicature Society's Center for Judicial Independence.
For additional information, please visit the AJS website at www.ajs.org.

JUDICIAL DECISIONMAKING AND THE CONSTITUTION

OVERVIEW

The goal of this activity is to understand how the Constitution applies to decisions made by judges. Participants will analyze the Fourth Amendment and apply it to specific scenarios. Issues of public safety and individual rights will be explored.

OBJECTIVES

Upon successful completion of this activity, participants will be able to:

- Analyze the Fourth Amendment;
- Apply the Fourth Amendment to specific case studies; and
- Weigh issues of public safety/security with individual rights.

MATERIALS NEEDED

- Copy of Fourth Amendment (page 43)
- Overhead Visuals – Trial and Appellate Courts
- Handout (page 39): Case Study/Supreme Court Conference
- Handout (page 41): FL v. J.L.
- Court Decisions (page 38, for facilitator only)

TIME REQUIRED

- Two hours

ACTIVITIES

1. Ask participants if they have ever been in a court. Ask about differences between trial and appellate courts. Review with participants using overhead visuals.
2. Ask participants what knowledge, skills, and qualities they think judges should have. List their answers. Should judges be influenced by public opinion when deciding cases?
3. Using a judge, review the Fourth Amendment with participants. Ask participants what this amendment covers. Dissect words and concepts to check for knowledge.

   Amendment IV.

   The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
4. Begin a dialogue to analyze the Fourth Amendment. What is a search? What is a seizure? What is protected by the Fourth Amendment? Who does the Fourth Amendment protect us from? Do you always need a warrant before you can search a person? What is probable cause? Check for understanding. Explain the exclusionary rule.
5. Using the case study form and case abstract, review the attached case with the full group. Have the group underline all relevant facts. Initiate a dialogue to review the facts. Ask participants what will happen to J.L.? J.L.'s attorneys will ask that the gun be suppressed as evidence because they feel the search was unlawfully conducted in violation of the Fourth Amendment. Lead a discussion to elicit arguments for both sides. Discuss the trial court decision as well as the DCA and Florida Supreme Court decisions sequentially. DO NOT announce the decision of the U.S. Supreme Court. Frame the question before the US Supreme Court. Ask participants individually and without discussion to determine how they would rule on the case and to list three reasons. (See numbers IV and V on case study form.)
6. Divide participants into groups of nine to simulate a Supreme Court. In this Supreme Court conference activity, each group should:
   a. Select a Chief Justice in each group to maintain order and lead discussions. Remaining participants are associate justices.

JUDICIAL DECISIONMAKING AND THE CONSTITUTION

b. Discuss in each group why the search was legal or illegal based on participants' knowledge of the Fourth Amendment. Different opinions will surface. Each person in the group should be allowed to speak once before anyone speaks twice.

c. The Chief Justice will poll the justices to determine the final decision of the Court. This will be discussed to try and reach a unanimous court decision.

d. Each Court's Chief Justice will present the final vote of their Court along with general comments.

7. Facilitator and resource person, preferably a judge will debrief with the actual U.S. Supreme Court decision.

COURT DECISIONS FOR FACILITATOR

The trial court granted J.L.'s motion to suppress the gun as it was obtained through an unlawful search. The court said the gun could not be used as evidence.

The district court of appeal reversed the trial court's decision and determined that the search was legal. The Florida Supreme Court disagreed with the appellate court's ruling and agreed with the trial court.

DO NOT ANNOUNCE UNTIL CONCLUSION OF THE ACTIVITY:

The U.S. Supreme Court held that an anonymous tip that a person is carrying a gun is not, without more, sufficient to justify a police officer's stop and frisk of that person.

This activity was developed by Annette Boyd Pitts, Executive Director of The Florida Law Related Education Association, Inc. For additional information, please visit our website at www.flrea.org.

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CASE STUDY/SUPREME COURT CONFERENCE

I. What are the Facts? _____

II. State the Issue to be Decided: _____

III. Arguments For Petitioner/Appellant: _____

IV. Arguments For Respondent/Appellee: _____

V. What Would You Decide? _____

VI. Reasons/Evaluation: _____

VII. Mock Supreme Court Conference Decision: _____

VIII. Actual Decision of the Court _____

FLORIDA v. J. L.

FLORIDA V. J.L.

An anonymous caller contacted the Miami-Dade Police Department by telephone and told them that a young, black male wearing a plaid shirt and standing at a specific bus stop by a pawnshop was carrying a gun. The tipster described the suspect as well as two other companions. Six minutes after the call, the police arrived at the bus stop and verified the accuracy of the informant's tip. Officer Anderson, a 14-year experienced veteran, and another officer saw the three black males, one of whom was wearing a plaid shirt.

The officers did not see a gun. While the three young men were hanging out by the bus stop, Officer Anderson and her partner approached them and frisked all three men. The individual in the plaid shirt, J. L., had a gun in his pocket. The other men did not have weapons.

J.L., who was almost 16 at the time, was charged under Florida law with carrying a concealed weapon without a license and possessing a firearm under the age of 18.

ISSUE

Is an anonymous tip that a person is carrying a gun sufficient to justify a police officer's stop and frisk of that person?

1. Review facts. What will happen to J.L.?
2. Review decision of trial court by asking participants what they think happened at this level. Get arguments from both sides.
3. Review the decision of the District Court of Appeal.
4. Review the decision of the Florida Supreme Court.
5. Ask participants to serve as U.S. Supreme Court justices and decide the case individually. Follow format in activity procedures.
6. Assemble Courts and follow instructions on previous pages.

FOURTH AMENDMENT
UNITED STATES CONSTITUTION

Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

JUDICIAL DISCIPLINE AND ACCOUNTABILITY

OVERVIEW

Providing effective remedies for judicial misconduct helps preserve judicial independence and maintain trust and confidence in the integrity of the courts. This lesson will introduce participants to judicial misconduct and how state court judges are subject to disciplinary action.

OBJECTIVES

- Determine what constitutes judicial misconduct for state court judges;
- Analyze appropriate sanctions for judicial misconduct;
- Apply the Code of Judicial Conduct to specific cases; and
- Differentiate between unpopular rulings and ethical violations.

MATERIALS NEEDED

- Handout A
- Handout B
- Code of Judicial Conduct (Appendices)
- Copies of fact strips (see Short Takes section)

TIME NEEDED

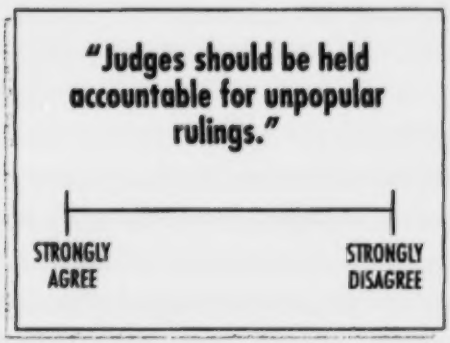
- Two to three hours

PROCEDURES

1. Using the Each one, Teach many activity, introduce participants to Article V of the Florida Constitution. Using fact strips from Article V have everyone find 5 people each with different facts. Each person will meet 5 people and learn 5 different facts. Give 10-15 minutes. Discuss by asking the full group what new facts they learned. Using a resource person (judge or attorney) in an inquiry-based dialogue, facilitate a full group discussion of the facts.

2. Ask participants what knowledge, skills, and qualities/characteristics they would want in a judge. Brainstorm with the full group. Then ask each individual participant to select his/her top three and write each one on a post-it note. On large chart paper, title pages Knowledge, Skills, and Qualities/Characteristics and hang around the room. Ask participants to post their choices under the proper category. Review and discuss.

3. Place signs on one wall designating a continuum with Strongly Agree and Strongly Disagree at opposite ends. Ask participants to write on a sheet of paper their individual positions on the following statement. Include 2-3 statements clarifying their position. Then have participants stand by the area, which reflects their position. Have several participants orally give their positions. Make sure both sides get equal time.



4. Review with participants Handout A - Judicial Discipline and Accountability. Discuss questions at the conclusion.

5. Distribute copies of the Code of Judicial Conduct (appendices section). Divide participants into groups of five. Give each group a canon to review. Have each group develop a poster and presentation to educate the public about each canon. Lengthier canons can be given to two groups. One

JUDICIAL DISCIPLINE AND ACCOUNTABILITY

group should also do the preamble. Have small groups present to the entire audience in order and keep posters on display.

6. Simulate the work of the Judicial Qualifications Commission. Listed in Handout B are several hypotheticals depicting cases before the Judicial Qualifications Commission. The content of these cases is similar to actual cases investigated by the JQC since 1996. In this activity participants will apply their knowledge of the Code of Judicial Conduct to actual case scenarios to review allegations of judicial misconduct and determine the appropriate sanctions in each case. Group guidelines follow.

   a. Divide audience into groups of five. Assign each group one or several cases to review.

   b. Each group represents a Judicial Qualifications Commission and should apply the Code of Judicial Conduct to each scenario.

   c. Determine if misconduct has occurred and draft sanctions to recommend to the Supreme Court of Florida. Refer to Article V, Section 12(1) of the Florida Constitution. Beyond the sanctions listed, are there other specific recommendations you would add? Rather than sending this case to the Supreme Court, would you recommend less formal action?

   d. Each small group should report its recommendations to the full group/audience.

Note: In reviewing these cases, remember these are hypotheticals. Each group will simulate a JQC panel to discuss the possibility of judicial misconduct. Each group will determine if formal action is needed, citing the appropriate canon violation in the Code of Judicial Conduct. Additionally specific disciplinary recommendations should be provided for Supreme Court review as applicable.

To review actual outcomes of similar cases, visit the Supreme Court of Florida website at www.flcourts.org/pubinfo/jqc/index.html

ABOUT THE CODE OF JUDICIAL CONDUCT FOR FACILITATOR

The Code of Judicial Conduct provides the ethical guidelines for the conduct of judges in Florida's court system. A detailed copy is attached. See appendices.

Questions for discussion.

1. What is the function of the JQC?
2. Where are the ethical standards for judges found?
3. When does a complaint against a judge become public?
4. Is the JQC part of the Supreme Court?
5. What types of discipline can be recommended by the JQC?

Note: Review Article V, Section 12 of the Florida Constitution.

This activity was developed by Annette Boyd Pitts, Executive Director of The Florida Law Related Education Association, Inc. Special thanks to Brooke Kennerly, Executive Director of the Florida Judicial Qualifications Commission for her substantive review of this material.

BEST COPY AVAILABLE

HANDOUT A: JUDICIAL DISCIPLINE AND ACCOUNTABILITY

INTRODUCTION

Providing effective remedies for judicial misconduct helps preserve judicial independence and maintain trust and confidence in the integrity of the courts. Article V of the Florida Constitution provides for a Judicial Qualifications Commission, an independent agency to investigate alleged misconduct by judges in our state courts system. Judges, lawyers, and non-lawyers serve on the Commission. The JQC does not have authority over federal judges. In the federal court system, federal judges abide by a Code of Conduct for United States Judges.

THE PROCESS

In Florida, individuals submit their complaints about state judges in writing to the Judicial Qualifications Commission in Tallahassee. No special forms are needed. The ethical standards judges must follow are in the Code of Judicial Conduct. Persons seeking judicial office such as in an election must also abide by Canon 7 of the Code. The Judicial Qualifications Commission not only investigates complaints submitted by individuals, the JQC can also initiate their own investigations. During the investigation phase, all JQC complaints and proceedings are confidential.

The case becomes public only when the JQC files with the Supreme Court of Florida a notice of formal charges. At this point, the Court acts only as the custodian of public records filed with it during the pending investigation. Any further action will be undertaken by the JQC.

A panel of JQC members will hear further proceedings against the judge. The amount of time varies from case to case. Some judges agree to some type of discipline which means the JQC proceedings stop and the case will go to the Supreme Court for final determination. If a judge disagrees with or contests the charges, additional time and proceedings are involved.

SUPREME COURT OF FLORIDA

The JQC is not a program of the Supreme Court. The JQC investigates complaints and recommends sanctions to the Supreme Court. The case actually goes to the Florida Supreme Court once the JQC has concluded its hearings. This is when the Judicial Qualifications Commission files its findings and recommendation for any discipline with the Supreme Court. Briefs can be filed with the Supreme Court before it decides the case. If oral argument is scheduled, it is announced in advance in the Court's Press Summaries which are available on-line.

TYPES OF DISCIPLINE

The Judicial Qualifications Commission may recommend one or more of the following forms of discipline.

- No discipline
- A fine
- A public reprimand administered during a formal Supreme Court session
- Suspension from office
- Removal from office
- Involuntary retirement due to disability

The JQC files its findings and recommendation for any discipline with the Florida Supreme Court. All Florida Supreme Court proceedings are broadcast on the Internet. Video archives are also available.

TYPES OF CASES

The vast majority of complaints received by the JQC are outside the scope and authority of the Commission. For instance, most of the complaints last year were from individuals who were not pleased with the outcome of a case or disagreed with the decision of a presiding judge. Errors in judicial decision-making may be reviewable through the appellate process, not the JQC. Remedies in certain instances may also include remedial legislation or constitutional amendment if appropriate. The JQC is responsible only for allegations of judicial misconduct or misbehavior according to the Code of Judicial Conduct as well as incapacity to hold office.

Wide ranges of allegations are received annually with the vast majority not considered legitimate JQC functions.

HANDOUT B: CASES

CASE 1.

Judge Cattlins was elected to county court in 1998. In her campaign against the incumbent judge, Cattlins made certain pledges and promises in favor of law enforcement. She also asserted that the incumbent judge was "soft on crime". Cattlins defeated the incumbent judge and now sits on county court. The JQC Hearing Panel, comprised of judges, attorneys, and lay citizens received testimony and documentary evidence. Judge Cattlins was represented at the hearing by her attorney.

Campaign literature was introduced demonstrating statements that Cattlins would help law enforcement by putting criminals where they belong. Cattlins also gave radio interviews during the campaign, which exhibited hostility towards defendants in criminal cases. She presented herself as a pro-prosecution/pro-law enforcement judge. Cattlins also misrepresented specific outcomes of cases heard by the incumbent judge she was running against.

Candidate Cattlins publicized details of pending cases of two criminal defendants in a manner that could have impacted the outcome of the cases or impaired the fairness of the proceedings.

During the campaign, Cattlins engaged in conduct unbecoming a candidate for judicial office. Cattlins conveyed the message in her campaign that it is permissible for judges to rule in a predisposed manner in certain types of cases. Cattlins' statements conveyed the impression that a judge's role is to combat crime rather than judge those who appear before the court in a fair and impartial manner.

During the JQC hearing, Cattlins did not deny her position during the campaign. Evidence introduced against Cattlins included campaign literature and radio excerpts. Judge Cattlins felt that she was not bound by all of the Canons governing judges because she was a candidate not a judge during the campaign. She felt her speech was constitutionally protected. Judge Cattlins presented 15 persons as character witnesses and 200 affidavits attesting to her skills as a sitting judge.

CASE 2.

Judge Landers is a circuit judge in South Florida. She has been a judge in criminal court for five years. Judge Landers has a close friend who is currently involved in a heated divorce and custody battle in the same circuit. Judge Landers is deeply concerned because the judge hearing her friend's case has decided to put the child temporarily in foster care because of the volatile circumstances in the home.

Judge Landers was outraged at the decision. She stormed into the other judge's hearing room and spoke in the presence of others about the case in a loud and angry voice. Judge Landers proceeded to inform the judge of her concerns about the child's father and tried to influence his decision in the case.

While the child was in foster care, Judge Landers also contacted one of the foster care workers and a detective conducting a criminal investigation in the case. Judge Landers expressed her displeasure with the conclusions in the case. She asked to be informed regularly. She indicated her personal interest in the case. Complaints were filed against Judge Landers by her friend's estranged husband and the judge hearing her friend's case.

Judge Landers denies being rude to the judge hearing her friend's case. Judge Landers initially stated that she had not contacted anyone regarding this case. Later she remembered calling the detective.

CASE 3.

Judge Casey has been assigned to hear a controversial case dealing with an armed robbery of a local convenience store. During the robbery, a teenager was shot. There were no eyewitnesses and the store surveillance camera was malfunctioning. Days later, police received an anonymous tip that a young man standing at the bus stop wearing jeans and a green t-shirt was carrying a gun. The tipster indicated the gun had been used in the robbery.

The police arrived within five minutes and saw a young man matching the description. They immediately searched the juvenile and found a gun. In court, the young man's attorney filed a motion to suppress the gun as evidence stating that an anonymous tip was not enough to permit the police to search the defendant. The judge agreed. With no gun as evidence, there would be no case. The public was in an uproar. Protests began as well as a letter writing campaign to the JQC asking for the judge's removal. The local mayor has gone on television urging the public to insist on the judge's removal.

Judge Casey asserts he has applied his knowledge of the law to the facts in this case to make his decision. He feels this is public reaction to an unpopular ruling.

CASE 4.

The Judicial Qualifications Commission has received complaints from several individuals that a state judge in one of Florida's 20 judicial circuits has appeared in court smelling of alcohol. The judge's behavior was allegedly rude and hostile. Two attorneys also wrote the JQC to report that Judge Braman had made demeaning remarks to them and told them to leave his courtroom. Three other judges from the same circuit also submitted complaints citing they smelled alcohol on Judge Braman's breath immediately prior to a court proceeding.

HANDOUT B: CASES

Judge Braman has been seen drinking with lawyers who appear before him in court. The JQC has investigated these allegations. Judge Braman admits he once had a drinking problem but he attended counseling and no longer does. He denies all allegations except that he does go to a local bar occasionally for a social drink. Lawyers from the community also go there. Judge Braman has been a county court judge for three years.

CASE 5.

Judge Cantora received a $200,000 loan from a friend to help finance her judicial election. After the check was issued to Judge Cantora's brother/treasurer, Judge Cantora accepted the funds with full knowledge of the contributor. Judge Cantor's friend says she loaned the money to Judge Cantora to help with her campaign.

Judge Cantora's friend owns a huge corporation in Florida. The company is frequently sued for negligence. The JQC has been investigating the contribution since it exceeds the $500 limit on contributions prescribed by law. Judge Cantor failed to report the contribution as required by law including name, address and occupation of the contributor.

Judge Cantora won the election.

Note: In reviewing these cases, remember these are hypotheticals. Each group will simulate a JQC panel to discuss the possibility of judicial misconduct. Each group will determine if formal action is needed, citing the appropriate canon violation in the Code of Judicial Conduct. Additionally specific disciplinary recommendations should be provided for Supreme Court review as applicable.

To review actual outcomes of similar cases, visit the Supreme Court of Florida website at www.flcourts.org/pubinfo/jqc/index.html.

STATE JUDGES: ELECT OR APPOINT?

SHOULD STATE JUDGES BE ELECTED OR APPOINTED THROUGH A MERIT SELECTION PROCESS?

OVERVIEW

Currently, in the State of Florida all judges on the District Courts of Appeal and the Florida Supreme Court are selected and retained under the merit system. Circuit and county court judges are elected, however, vacancies are filled through the merit selection process.

In the system of merit selection, a Judicial Nominating Commission convenes for the purpose of nominating at least 3 qualified judicial candidates to fill a judicial vacancy. The composition of the Judicial Nominating Commission includes lawyers and non-lawyers approved by the Governor. The selection process for Judicial Nominating Commission members was recently changed in the 2001 legislative session.

Applications for judicial vacancies are received and reviewed by the appropriate Judicial Nominating Commission. Twenty-six judicial nominating commissions operate in Florida; one for the Supreme Court of Florida; one for each DCA; and one for each of the 20 judicial circuits. The Governor makes the final selection from the list of recommendations.

Nominees must meet all constitutional and statutory requirements. According to the Governor's Office website, important attributes examined include integrity and high ethical standards, legal knowledge and ability, professional experience, temperament, diligence, financial responsibility, and public service.[1]

In elections, judges run in non-partisan, judicial campaigns to win the popular vote. Judges may have to raise campaign money for the election. However, voters make the decision on who is elected to the bench.

This exercise will help participants analyze the different methods by which judges are selected for the bench.

OBJECTIVES

- Define merit selection and retention;
- Examine alternative arguments for both judicial elections and appointments using the merit selection system; and
- Formulate and defend a decision on this issue.

MATERIALS NEEDED

- Handout (page 55): Group Role Assignments
- Handout (page 57): Merit Selection Handout
- Handout (page 59): Proposed Legislation
- Handout (page 61): Evaluating Proposed Laws Handout

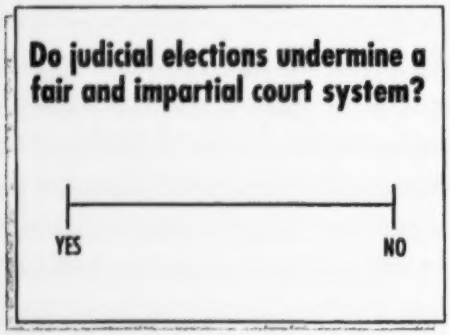
TIME NEEDED

- Two hours

PROCEDURES

1. Compare and contrast the state and federal judiciary. See charts in appendices section.
2. Explain the terms "merit selection" and "merit retention". Distribute copies of Handout A. Discuss merit selection/ appointments vs. election of judges. Describe the issues in a neutral, objective fashion so that both sides of the issue are clear.
3. Have participants brainstorm arguments for merit selection of all judges; and for election of all judges. Remain neutral and objective. Ask questions to examine both sides.
4. Add any important arguments the participants might have missed. Discuss.
5. Put on the board a continuum with "Yes" on one end and "No" on the other end. Ask participants the following question, "Do judicial elections undermine a fair and impartial court system?" Have participants think about their position regarding this question and to write it down. Participants should list two of the most compelling arguments that support their position.

STATE JUDGES: ELECT OR APPOINT?



Examples:

YES, judicial elections undermine a fair and impartial court system. Trial court judges have to raise campaign funds from lawyers who appear before them in court. They must seek and accept campaign donations and pursue the support of voters. Judges are not like legislators. Judges do not represent the people. They represent the law. Judges must be impartial and neutral. Judges should make decisions free from public and political pressures.

NO, judicial elections do not undermine a fair and impartial court system. Elections are an important extension of our democratic values. Judicial elections allow voters to decide who will dispense justice in their communities. In Florida, voters in all 67 counties voted to elect county and circuit court judges.

6. Ask for a few volunteers to stand at their position on the continuum. These participants should state their position and identify one or two reasons for their decision.

7. Ask participants from each side to identify one reason/argument from the opposing view that was most persuasive/convincing. Participants may move if they change their position throughout the activity.

8. Legislative Hearings on Proposed Bill

Distribute copies of hypothetical House Bill 567. A similar bill was introduced in the 2002 legislative session. Divide the participants in small groups with odd numbers of people in each group. Using the attached intellectual tools chart, analyze the proposed legislation. Determine the purpose of the proposed legislation; will it have an impact on judicial independence and if so how; how will it change our current system. Examine Article V of the Florida Constitution to review current requirements.

Next, assign each group a specific role (see below). Now analyze the proposed bill from this perspective. Give each group 15-20 minutes to develop a three-minute presentation. Each group will appear before the legislative committee to present the group's perspective on this proposed legislation. Select one person per group to present.

After each group has presented its testimony, debrief while the legislative committee reaches a decision. Have the committee announce its decision before the full group.

[1]www.myflorida.com Judicial Appointment Process – Governor's office

HANDOUT: GROUP ROLE ASSIGNMENTS

GROUP I
LEGISLATIVE COMMITTEE

You are the elected legislators assigned to the committee to determine if this bill should become a law. Select a chairperson. The committee can ask questions to the groups providing testimony. You will listen to public testimony and then decide as a committee one of three options.

a. Accept the bill as written and approve it.

b. Reject the bill and offer no substitute language.

c. Rewrite/amend the bill.

Announce your decision following the conclusion of the hearing after a short recess.

GROUP II
WE THE VOTERS

You represent a citizen advocacy group. You do not support this bill. You want the Committee to withdraw the proposed bill. You support the current system of merit retention for Supreme Court justices and district courts of appeal judges. You do not want the Governor directly appointing appellate judges. You do not want an 18 consecutive year limit on judges. You want less politics involved in the judicial branch.

GROUP III
JUDGE WATCH

You represent a judicial watch group that feels judges have too much power. You want the bill to pass unamended. You feel the Governor should choose judges that reflect his political perspective.

GROUP IV
PUBLIC SERVICE ATTORNEYS ASSOCIATION

You represent a professional, voluntary association with over 100,000 attorney members statewide. You oppose direct judicial appointments by the Governor. You feel the legislature is trying to give itself and the Governor more power over the judiciary. The current system of merit selection and retention has been effective. There is no need to change the system.

GROUP V
CITIZENS FOR FAIR COURTS

You are advocates for fair and impartial courts. Your membership is predominately 60 years and older concerned citizens. Your members attend court observer programs regularly. You follow every bill proposed by the legislature that will impact the judiciary. You feel the judicial branch is the voiceless branch and cannot speak out like the other branches of government. You feel that merit retention should be maintained and that the Governor should not be appointing justices that will mimic his political beliefs. Judges should follow the law period. If the legislative committee decides to use any part of this bill, the only thing you agree with is the removal of the 70-year maximum age limitation for judges.

GROUP VI
THE FEDERALISTS

You represent a group of citizens who feel that state court judges should have the same constitutional protections as federal court judges. You advocate for life tenure of state court judges because federal judges are assured this under the U.S. Constitution. You support the appointment of judges with Senate confirmation. You are asking that the bill be amended to call for a constitutional amendment to ensure state court judges have the same protections as federal court judges.

GROUP VII
THE PUBLIC EYE

You support making public the proceedings of Judicial Nominating Commissions. You want access to all information utilized by the JNCs in making their decisions. However, you do not support other components of the bill.

HANDOUT: MERIT SELECTION AND RETENTION IN FLORIDA

BACKGROUND

Merit selection is a method of choosing judges on the basis of ability. In Florida, whenever a judicial vacancy occurs, a slate of at least three qualified nominees is chosen by a judicial nominating commission, a body composed of lay citizens and lawyers. Twenty-six judicial nominating commissions operate in Florida; one for the Supreme Court of Florida; one for each DCA; and one for each of the 20 judicial circuits. This list of nominees then is submitted to the governor who fills the vacancy by appointing one of those nominees. Currently, all appellate judges (DCA and Supreme Court) are selected under this system in Florida. The composition of Judicial Nominating Commissions was changed recently by the Florida legislature giving the Governor more control over who serves on each commission.

Merit retention is the method by which voters decide whether an appellate judge will serve an additional term. A simple statement on the voting ballot reads, "Shall Justice/Judge (name) of the (name of) court be retained in office? " The voter marks "yes" or "no" in response.

Only those appellate court judges in Florida receiving approval from a majority of the voters continue in office for another six-year term. At the end of that term, the judge's name must again be submitted for voter approval. Judges receiving continued favorable reaction from the voters may continue to serve until retirement. In the federal courts, judges serve for life.

If an appellate court judge in Florida received a majority negative vote in the election, their judicial office becomes vacant at the end of that term and is filled through the merit selection process and subsequent appointment by the governor. All newly appointed appellate judges serve an initial term of at least one year and are then subject to an initial merit retention review of their performance in the next general election. Thereafter, the judge stands for review every six years.

District Courts of Appeal judges face a merit retention vote only among voters in their respective judicial districts. State Supreme Court Justices are on the ballot statewide.

Prior to the adoption in 1968 of Article V of the revised Florida Constitution, judges were elected by partisan ballot (political party). With the 1971 passage of HB 168 implementing Article V, Florida moved to a non-partisan ballot and to a merit selection system for filling interim vacancies.

Before 1976, **appellate** judges campaigned for re-election every six years. This former system, while demanding that judges be impartial, imposed on them the need to raise campaign funds which for the most part came from lawyers who would appear before them. The practice brought into question a judge's ability to be impartial.

In 1998, the Constitution Revision Commission placed on the ballot an amendment allowing Floridians to decide if their local **circuit and county** court judges should be elected or appointed through the merit selection and retention process. Florida voters in each county decided on the November 7, 2000 ballot to continue electing circuit and county judges.

ISSUES

Federal judges are appointed for life. State court judges may be elected or selected through the merit selection process and then appointed by the Governor. What is the best avenue for selecting judges? What issues should be considered?

Supporters of merit selection/retention say that campaigning for the bench invites conflict of interest and allows unqualified people to win crucial judicial positions. Additionally, judges should be guided by law not by the popular vote. We should insulate judges from public and political pressures. Those on the other side argue that allowing "elite" groups to select candidates for gubernatorial appointment divests the people of their power in a democratic government. Elections allow voters to decide who will dispense justice in their communities.

In Florida, elected judges are reportedly disciplined at a much higher rate than judges who are appointed under the merit process. Since 1998 nearly three times as many elected judges have been disciplined as appointed judges. More than 2/3 of all states use some form of the merit process for judicial selection and retention. However many states continue to elect appellate judges to even there highest state courts.

These and other issues should be considered in the debate of how best to select judicial candidates. In summary, Florida's current system allows for nonpartisan, elections for local trial court judges at the county and circuit levels. Appellate judges (district courts of appeal and Florida Supreme Court) are selected through a merit selection process by a Judicial Nominating Commission. The Governor makes an appointment from the JNC's list of qualified candidates. The merit retention system provides that voters decide whether or not to retain appellate judges every six years. This is a yes/no vote.

HOW WOULD YOU EVALUATE FLORIDA'S SYSTEM?

While this system is provided for in the Florida Constitution, bills are proposed annually in the legislature to change this process, giving the executive or legislative branches more control of the judiciary. This exercise will help you analyze such measures.

HANDOUT: PROPOSED LEGISLATION

HOUSE 0567: RELATING TO JUSTICES & JUDGES

H567 Joint Resolution by B. B. (Compare S 0162)

Justices & Judges; this bill proposes a state constitutional amendment to make proceedings of judicial nominating commissions public & to abolish retention elections for offices of Supreme Court justice and district courts of appeal judge, making offices appointive by the Governor, subject to Senate confirmation, with no one eligible to serve more than 18 consecutive years; removes 70-year maximum age limitation for all judges & justices, etc. Amends Art. V; creates s. 26, Art. Xii.

Note: A similar bill was proposed during the 2002 Florida legislature.

HANDOUT: EVALUATING PROPOSED LAWS

QUESTIONS	ANSWERS
1. What is the proposed law to be evaluated?	
2. What is the purpose of the proposed law? What does it seek to change?	
3. Is the proposed law necessary or are there better ways to accomplish the same purpose?	
4. What might be the effect of the proposed law?	
5. What are the strengths and weaknesses of the proposed law?	
6. What do you think? Should the proposed law be kept as it is, changed, or eliminated? Why?	

Adapted from Foundations of Democracy series. Center for Civic Education, Calabasas, CA.

TOWN HALL FORUM: JUDICIAL INDEPENDENCE

INTRODUCTION

What is judicial independence and why is it important in American democracy? How can we keep politics and public opinion out of the administration of justice? The Town Hall Forum will encourage citizens to explore the current threats to an independent judiciary and develop recommendations for public debate.

OBJECTIVES

- To examine issues relating to an independent judiciary; and
- To participate in a Town Hall Forum and generate recommendations on judicial independence.

TIME

- Approximately two hours

MATERIALS

- Procedures for opening session moderator
- Copies of background material for panel members
- Copies of background material for the facilitators of the small group discussions.

OTHER SUPPLIES

- Chart Paper and Easels for each group
- Markers
- Tape

PROCEDURES

Preparation before the Forum:

1. Choose a panel. Include law professors, local attorneys, judges, and civic leaders. Strive to include opposing viewpoints, for instance, select elected trial judges and appellate judges who have been appointed through the merit selection process.
2. Select a moderator for the panel.
3. Ask four additional people to act as facilitators for the small group discussions.
4. Copy materials for facilitators of each group as well as the panel. It would be helpful to send the materials to the facilitators before the Forum.

The Forum:

1. If the panel and facilitators have not been given the background material, do so before the Forum begins so that they can become familiar with the material.
2. Once the panel and participants are ready, the panel moderator will begin the session. The opening session of the forum will begin with a discussion among the panelists addressing the following:
   - What is the role of the judge in American democracy?
   - How are state and federal judges/courts different?
   - What is judicial independence and is it important in American democracy?
   - Should judges be influenced by public opinion or political factors in their decisions?
   - Are judges held accountable for their actions and decisions?
   - Do judges have too much power?
   - How should judges be selected for their positions?

   The moderator will lead the panelists in a balanced and lively discussion of these issues.

TOWN HALL FORUM: JUDICIAL INDEPENDENCE

3. Following the opening session discussion, divide the audience into four or more groups of no more than fifteen participants, if possible. Each group should be assigned a facilitator. The facilitator should have been given fact sheets to help with the discussion. Each of the four groups will discuss one of the following questions:

   a. What makes an effective judge? Describe the knowledge, skills, and qualities of a good judge. How can we best ensure a fair and impartial judiciary?

   b. Is judicial independence threatened today? If so, how? Categorize the current threats to judicial independence and evaluate the level of each threat.

   c. What is the most effective method of securing judges to ensure the fair and impartial administration of justice? Compare the state and federal systems.

   d. Are the ethical standards established for judicial conduct reasonable? Evaluate the Code of Judicial Conduct and the constitutional mechanisms for disciplining judges.

4. The four discussion groups will have about 30 minutes to answer the assigned questions. The discussion should be balanced. List the specific question/topic at the top of a piece of chart paper. Then, list answers and recommendations for full group presentation.

5. Reconvene into a large group. Each discussion group will bring to the whole audience their findings and important points of their discussion, as well as any recommendations they developed. This should open up discussion for the entire group. The facilitator should help summarize the findings and generate comments from the full group.

6. After all groups have reported and the discussion is over, the panel and moderator should make the concluding remarks.

This activity was developed by Cynthia Brendle, Zephyrhills High School with assistance from Annette Boyd Pitts, Executive Director, The Florida Law Related Education Association, Inc. and Mimi Jones, League of Women Voters/Tallahassee.

TOWN HALL FORUM: PANEL MODERATOR PROCEDURES

1. Once the panel is seated, the panel moderator will call the Forum to order.
2. Using the background materials, the moderator will lead a panel discussion on the following topics:
   - What is the role of the judge in American democracy?
   - How are state and federal judges/courts different?
   - What is judicial independence and is it important in American democracy?
   - Should judges be influenced by public opinion or political factors in their decisions?
   - Are judges held accountable for their actions and decisions?
   - Do judges have too much power?
   - How should judges be selected for their positions?
3. Following this discussion, divide the participants into four or more groups of no more than 15 individuals.
4. Introduce the facilitator for each group.
5. Each small group should then go to separate rooms to discuss one of the following questions:
   a. What makes an effective judge? Describe the knowledge, skills, and qualities of a good judge. How can we best ensure a fair and impartial judiciary?
   b. Is judicial independence threatened today? If so, how? Categorize the current threats to judicial independence and evaluate the level of each threat.
   c. What is the most effective method of securing judges to ensure the fair and impartial administration of justice? Compare the state and federal systems.
   d. Are the ethical standards established for judicial conduct reasonable? Evaluate the Code of Judicial Conduct and the constitutional mechanisms for disciplining judges.
6. Each group will address one of the four questions. The facilitator for each group will lead the discussion to ensure a balanced review of issues. The discussion groups will have 30 minutes to address their assigned question. The discussion should include both sides of the issue through a Socratic dialogue.

   A reporter from each group will be chosen to present to the full audience. The reporter will highlight on chart paper the findings and important points from their discussions, as well as any recommendations they develop.
7. After the set amount of time, reconvene the whole group.
8. Reporters from each group will then share the important points of their discussion and any recommendations they developed with the whole group. Chart paper highlighting these recommendations will be hung for presentation and display.
9. Panel members may make remarks following each group's presentation. Input from the full audience may be solicited to gauge a wider range of views.
10. To end the program, the moderator should conclude the Forum by summarizing the evening's activities.

TOWN HALL FORUM: SMALL GROUP FACILITATOR PROCEDURES

1. When the General Session is completed you will be assigned to a small group from the audience.

2. When the large group reconvenes, each small group will share the important points of their discussion and highlight any recommendations they developed. Reporters from each group should record and present the small group's findings. Chart paper should be used to highlight the strong points of the discussion and to list the consensus recommendations.

3. Using the background materials, the facilitator will lead group discussions on one of the following topics. The reporter will record and present the group's findings to the full assembly.

   A. What makes an effective judge?

      a. Describe the knowledge, skills, and qualities of a good judge.

      b. Should judges be influenced by public opinion or political factors in their decisions?

      c. How are judges on television different from judges in real courtrooms in Florida?

      d. How can the public evaluate the effectiveness of judicial candidates?

      e. How can we best ensure a fair and impartial judiciary?

      f. What recommendations do you have?

   B. Is judicial independence threatened today?

      a. Define and review the history of judicial independence.

      b. What is the responsibility of the judicial branch?

      c. Is having an independent judiciary important in a democracy?

      d. How are judges limited in their powers?

      e. What do you consider threats to judicial independence today?

      f. Are the threats different at the state level vs. the federal level?

      g. Categorize the threats to an independent judiciary and evaluate the level of threat posed by each.

      h. What recommendations do you have to reduce the threats to judicial independence?

   C. What is the most effective method of securing judges to ensure the fair and impartial administration of justice?

      a. Compare/contrast the state and federal systems.

      b. What are the positive aspects of merit selection/retention? Negative?

      c. What are the positive aspects of elections? Negative?

      d. Which method would ensure that judges be the most independent? Why?

      e. What recommendations can you make regarding this issue?

   D. Are the ethical standards and disciplinary procedures established for judges reasonable? Review the Florida Constitution and the Code of Judicial Conduct. How are judges held accountable for their actions? What is the difference between misconduct and unpopular rulings? Should judicial decisions be criticized?

4. Reconvene in the large group.

GROUP ONE: FACILITATOR MATERIALS

"We cannot ask a man what he will do on the court, and if we should, and he should answer us, we should despise him for it." — Abraham Lincoln

Topic: What makes an effective judge? Describe the knowledge, skills, and qualities of a good judge. How can we best ensure a fair and impartial judiciary?

Through discussion, generate a list summarizing the knowledge, skills, and qualities of an effective judge. Generate a comprehensive list and categorize. How are judges on television different from judges in real courtrooms in Florida?

Review the Code of Judicial Conduct (see appendices) with the small group. Would you add anything to your list based on this document?

Review the attributes listed on the Governor's Office website for judicial nominees (see Handout A). These categories include integrity and high ethical standards, legal knowledge and ability, professional experience, judicial temperment, diligence, financial responsibility and public service. Read the descriptions of each category. Would you revise your list any further?

Should judges represent the will of the people?

Should judges be influenced by public opinion or political pressures in their decisions?

Generally while people may not fully grasp the concept of judicial independence, most would agree they want judges to be fair and impartial. Judges represent the law and the Constitution. Then how should we evaluate judges? Should we evaluate judges on their knowledge of the law, their fairness, and their demeanor, or upon their individual decisions? If we hold judges accountable for their individual decisions, should we base this on whether or not we agree with decisions in individual or high profile cases or whether the decisions are based on a reasoned and knowledgeable interpretation of the law?

How can we best ensure a fair and impartial judiciary? Can you think of any circumstances which may undermine an independent judiciary? What recommendations do you have for ensuring trust and confidence in our courts?

Addressing your specific topic question, list on the chart paper your answers and recommendations for full group presentation.

HANDOUT A: ATTRIBUTES FOR JUDICIAL NOMINEES

What does the Governor and his legal office look for in judicial candidates?

Nominees must meet all of the constitutional and statutory requirements, and be fit for appointment to the particular judicial office. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so the integrity and independence of the judiciary may be preserved. Full and careful consideration is given to each nominee. Some important attributes include:

- **Integrity and high ethical standards.** A candidate must be of undisputed integrity. The integrity of the judge is the keystone of our judicial system. Integrity enables a judge to disregard personalities and partisan political influences and enables him or her to base decisions solely on the facts and the law applicable to those facts. It is imperative that a judicial candidate's integrity and character with regard to honesty and truthfulness be above reproach. A judicial candidate's past personal and professional conduct must demonstrate consistent adherence to the highest standards of ethical conduct and a commitment to the values upon which our nation is founded.
- **Legal knowledge and ability.** A candidate must possess a high degree of knowledge of established legal principles and procedures and have the ability to interpret and apply them to specific factual situations. Also critical are a willingness to learn the new skills and knowledge which will become essential to a judge's performance and a willingness to improve judicial procedure and administration.
- **Professional experience.** A candidate must be an experienced lawyer, licensed to practice law in Florida. Consideration will be given to the depth and breadth of the professional experience and the competence with which legal work has been performed. The candidate's professional experience should be long enough to provide a basis for the evaluation of the candidate's demonstrated performance and long enough to ensure that the candidate has had substantial exposure to legal problems and the judicial process.
- **Judicial temperament.** A nominee must posses a judicial temperament, which includes common sense, compassion, decisiveness, firmness, humility, open-mindedness, patience, tact, understanding and a commitment to principles of judicial restraint. The interviews help provide insight into the temperament of our judicial candidates.
- **Diligence.** Candidates should have good work habits and the ability to set priorities.
- **Financial responsibility.** A candidate should be financially responsible.
- **Public service.** Consideration is given to a candidate's previous public service and pro bono activities. Non-legal experiences are also taken into consideration. Broad life experiences are desirable.

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GROUP TWO: FACILITATOR MATERIALS

"The greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent Judiciary."
— John Marshall

Topic: Is judicial independence threatened today? If so, how? What recommendations do you have to ensure the independence of the judicial branch?

Define and review the concept of judicial independence. Read the articles by Dr. John Patrick and Judge Joseph Hatchett in this resource guide. What is the responsibility of the judicial branch? How can these responsibilities be best achieved?

From its beginning, our system of constitutional democracy has depended on the independence of the judiciary. Courts are able to protect the basic rights of individuals and decide cases fairly only when they are free to make decisions according to the law, without regard to political pressure.

Judicial independence is the freedom a judge should have to decide a case based on the facts and law, free from outside pressure or special interests. Judicial independence is important because a fair and unbiased hearing is a basic foundation of American democracy. By and large, Americans believe that a judge's decision, even if unpopular, should be reached by reasoned and unbiased analysis.

Judicial independence assures that cases will be decided based on their merits, not on what is popular at the moment. Judges are expected to make unbiased decisions based on their interpretation of the law without any outside influence. The founding fathers created the judicial branch so that it could operate fairly and impartially without fear of political retribution. The founding fathers felt that America was in need of independent courts that were free from the overreaching powers of the government. Judges who do not fear being ridiculed or punished for using their best judgment to interpret the law provide continuity and stability in the legal system.

Even though not specifically mentioned in the Constitution, one of the most important powers of the judiciary is judicial review. Judicial review gives the courts review power over the law. It wasn't until 1803 in the case of Marbury v. Madison that judicial review was confirmed. Marbury was the first case in which the judiciary's power to review and void the acts of another branch of the federal government was exercised. Chief Justice John Marshall said, "it is emphatically the province of the judicial department to say what the law is". He argued that it was the Supreme Court's responsibility to uphold the Constitution and declare any law to be unconstitutional if it violated the Constitution. Therefore, any executive or legislative act can be subject to judicial review as a way to check or balance any branch of government.

What threats to judicial independence exist today? The Center for Judicial Independence has outlined several specific threats to consider. Review and analyze these threats for presentation to the full group. Are these legitimate threats? What level of threat do they pose? What additional threats can you think of?

- **Political Threats.** Can political threats intended to influence a judge's decision in a specific case threaten the independence of the judiciary? If so, how?
- **Misleading Criticism and Prohibition of Judicial Response.** Criticism of judges and their decisions is a part of the judicial system. When the criticism by lawyers, politicians and citizens becomes misleading it may leave the judge unable to make a public response. A judge is held by certain ethical rules which may prohibit the judge from making a public response, therefore, the judge may suffer adverse consequences. Additionally, when criticism turns to intimidation can this threaten judicial independence?
- **Judicial Salaries.** Judicial salaries for federal judges are guaranteed not be reduced by the U.S. Constitution. However, Congress is responsible for pay raises. Under the state system, judges salaries are fixed by state law.
- **Code of Judicial/Judicial Discipline.** Complaints against state level judges are filed with the Judicial Qualifications Commission. Judges in Florida must follow the Code of Judicial Conduct. Does the discipline process hold judges more accountable or threaten judicial independence?
- **Judicial Activism.** Sometimes the term "judicial activism" is used to criticize judges. How can activism or even the use/misuse of the term impact judicial independence?
- **Inter-branch Relationships.** Can poor inter-branch relationships between the judicial, legislative, or executive branches impact judicial independence? Explain.
- **Elections.** Can elections of judges lead to concerns and potential conflicts of interest regarding campaign contributions? If so, how could this impact judicial independence?

GROUP TWO: FACILITATOR MATERIALS

- **Retention Elections.** Appellate judges that are appointed through the merit selection process must stand for a retention vote? Do retention elections pose the threat of judges being targeted by special interest groups based on legally correct but politically or socially unpopular decisions?
- **Funding.** The appropriations for funding the judicial branch come from the legislative branch with approval from the executive branch. Does this pose any threat to judicial independence?
- **Legislative Intervention.** New laws or constitutional amendments can be proposed to weaken the power of the judiciary, change how judges are selected, or curtail jurisdiction of the courts. Can this impact judicial independence?

What other potential threats can you think of? How would you evaluate and rank these threats?

GROUP THREE: FACILITATOR MATERIALS

Topic: What is the most effective method of securing judges to ensure the fair and impartial administration of justice?

Compare the state and federal systems for judicial selection. Review Article III of the U.S. Constitution and Article V of the Florida Constitution. What are the differences/similarities? List in a chart format. See appendices for helpful information.

In Florida, county and circuit judges are elected. Appellate judges (Florida Supreme Court and District Courts of Appeal) go through a merit selection process with a Judicial Nominating Commission reviewing applications and making recommendations to the Governor. Use the lesson on page 53-61 and Handout B from this lesson for the following discussion. Distribute copies of the attached handout which follows. What are the positive/negative aspects of merit selection/retention? What are the positive/negative aspects of elections? Which method do you feel fosters greater judicial independence? Why? What recommendations would you make?

Based on your review, how would you evaluate Florida's system? Does this system provide balance and accountability?

Would you want the legislative or executive branches to have more control over our judiciary? Less control? Why or why not?

HANDOUT B: MERIT SELECTION AND RETENTION IN FLORIDA

BACKGROUND

Merit selection is a method of choosing judges on the basis of ability. In Florida, whenever a judicial vacancy occurs, a slate of at least three qualified nominees is chosen by a judicial nominating commission, a body composed of lay citizens and lawyers. Twenty-six judicial nominating commissions operate in Florida; one for the Supreme Court of Florida; one for each DCA; and one for each of the 20 judicial circuits. This list of nominees then is submitted to the governor who fills the vacancy by appointing one of those nominees. Currently, all appellate judges (DCA and Supreme Court) are selected under this system in Florida.

Merit retention is the method by which voters decide whether an appellate judge will serve an additional term. A simple statement on the voting ballot reads, "Shall Justice/Judge (name) of the (name) court be retained in office? " The voter marks "yes" or "no" in response.

Only those appellate court judges in Florida receiving approval from a majority of the voters continue in office for another six-year term. At the end of that term, the judge's name must again be submitted for voter approval. Judges receiving continued favorable reaction from the voters may continue to serve until retirement. In the federal courts, judges serve for life.

If an appellate court judge in Florida received a majority negative vote in the election, their judicial office becomes vacant at the end of that term and is filled through the merit selection process and subsequent appointment by the governor. All newly appointed appellate judges serve an initial term of at least one year and are then subject to an initial merit retention review of their performance in the next general election. Thereafter, the judge stands for review every six years.

District Courts of Appeal judges face a merit retention vote only among voters in their respective judicial districts. State Supreme Court Justices are on the ballot statewide.

Prior to the adoption in 1968 of Article V of the revised Florida Constitution, judges were elected by partisan ballot (political party). With the 1971 passage of HB 168 implementing Article V, Florida moved to a non-partisan ballot and to a merit selection system for filling interim vacancies.

Before 1976, **appellate** judges campaigned for re-election every six years. This former system, while demanding that judges be impartial, imposed on them the need to raise campaign funds which for the most part came from lawyers who would appear before them. The practice brought into question a judge's ability to be impartial.

In 1998, the Constitution Revision Commission placed on the ballot an amendment allowing Floridians to decide if their local **circuit and county** court judges should be elected or appointed through the merit selection and retention process. Florida voters in each county decided on the November 7, 2000 ballot to continue electing circuit and county judges.

ISSUES

Federal judges are appointed for life. State court judges may be elected or selected through the merit selection process and then appointed by the Governor. What is the best avenue for selecting judges? What issues should be considered?

Supporters of merit selection/retention say that campaigning for the bench invites conflict of interest and allows unqualified people to win crucial judicial positions. Additionally, judges should be guided by law not by the popular vote. We should insulate judges from public and political pressures. Those on the other side argue that allowing "elite" groups to select candidates for gubernatorial appointment divests the people of their power in a democratic government. Elections allow voters to decide who will dispense justice in their communities.

In Florida, elected judges are reportedly disciplined at a much higher rate than judges who are appointed under the merit process. Since 1998 nearly three times as many elected judges have been disciplined as appointed judges. More than 2/3 of all states use some form of the merit process for judicial selection and retention. However many states continue to elect appellate judges to even there highest state courts. For example, Texas Supreme Court justices raise campaign contributions and are elected to the bench.

These and other issues should be considered in the debate of how best to select judicial candidates. In summary, Florida's current system allows for nonpartisan, contested elections for local trial court judges at the county and circuit levels. Appellate judges (district courts of appeal and Florida Supreme Court) are selected through a merit selection process by a Judicial Nominating Commission. The Governor makes an appointment from the JNC's list of qualified candidates. The merit retention system provides that voters decide whether or not to retain appellate judges every six years. This is a yes/no vote.

How would you evaluate Florida's system?

While this system is provided for in the Florida Constitution, bills are proposed annually in the legislature to change this process, giving the executive or legislative branches more control of the judiciary. This exercise will help you analyze such measures.

GROUP FOUR: FACILITATOR MATERIALS

Topic: Are the ethical standards and disciplinary procedures established for judges reasonable? How are judges held accountable for their actions? What is the difference between misconduct and unpopular rulings? What recommendations do you have to ensure a fair and impartial judiciary?

Review the Code of Judicial Conduct (see appendices) to demonstrate the ethical standards established for state court judges. Divide the group into smaller groups to analyze each section. Assign one or two sections per group. Give 5-10 minutes to review and prepare a presentation. Have each group teach the full group its specific section. Posters can be made to visualize concepts. What types of activities/behavior does the code address? Are these reasonable?

Are unpopular rulings considered misconduct? Should judges decide cases based on how the majority of citizens feel about a particular issue? Why or why not? Consider times in the history of our country when the courts have made decisions inconsistent with the popular will in order to apply the law fairly and independently. These decisions were most likely not popular. On the other hand some might argue that the judicial branch goes too far, in some cases "creating law" through its decisions. The ability of the judicial branch to review laws and determine their constitutionality is an important component of American democracy. Review the concept of judicial review.

In Florida, complaints against state court judges can be filed with the Judicial Qualifications Commission. Review Article V of the Florida Constitution to determine specific sanctions. The Judicial Discipline and Accountability lesson contained in this guide can be used to demonstrate the application of the Judicial Code of Conduct to specific complaints. However, many of the complaints filed against judges are from people who disagree with a judge's decision. These complaints do not address allegations of misconduct. If you are dissatisfied with a decision, there are other avenues to explore such as the appellate system.

Criticism of the judiciary and their decisions can be healthy in a democracy. Legitimate criticism of a judge's behavior may also have an impact on accountability and ethics. However, when criticism is taken to the next step - to influence the decision of a judge or to have them removed from office because of an unpopular decision, then the integrity and impartiality of judicial decision-making may be threatened. What is legitimate criticism? When does it go too far and what are the implications?

What recommendations can you make to ensure we have judges and a judicial system that is fair and impartial? Do you feel Florida's judges in our state courts are accountable for their conduct?

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CODE OF JUDICIAL CONDUCT
FOR THE STATE OF FLORIDA
Online Version

Reports of misconduct by judges must be made to the Judicial Qualifications Commission at (850) 488-1581.

The opinions of the Judicial Ethics Advisory Committee are available on the Sixth Judicial Circuit Website.

Preamble

Definitions

Canon 1. A Judge Shall Uphold the Integrity and Independence of the judiciary

Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities

Canon 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

Canon 4. A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

Canon 5. A Judge Shall Regulate Extra judicial Activities to Minimize the Risk of Conflict With Judicial Duties

Canon 6. Fiscal Matters of a Judge Shall be Conducted in a Manner That Does Not Give the Appearance of Influence or Impropriety; etc.

Canon 7. A Judge or Candidate for Judicial Office Shall Refrain From Inappropriate Political Activity

Application

A project of
The Judicial Ethics Advisory Committee
And Florida's Sixth Judicial Circuit Courts.

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CODE OF JUDICIAL CONDUCT

PREAMBLE

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct establishes standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Definitions Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Definitions and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which, if proven, can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is not to be construed to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

CANON 1

A Judge Shall Uphold the Integrity And Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

C. A judge should not hold membership in an organization that practices invidious discrimination on the basis of race, sex, religion, or national origin. Membership in a fraternal, sororal, religious, or ethnic heritage organization shall not be deemed to be a violation of this provision.

CANON 3

A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

A. **Judicial Duties in General.**

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the specific standards set forth in the following sections apply.

B. **Adjudicative Responsibilities.**

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so. This section does not preclude the consideration of race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors when they are issues in the proceeding.

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words, gestures, or other conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel, or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized, provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond.

(c) A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

(8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to

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proceedings in which the judge is a litigant in a personal capacity.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

C. **Administrative Responsibilities.**

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

D. **Disciplinary Responsibilities.**

(1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.

(2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.

(3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

E. **Disqualification.**

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer or was the lower court judge in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

(c) the judge knows that he or she individually or as a fiduciary, or the judge's spouse, parent, or child wherever residing, or any other member of the judge's family residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than deminimize interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than deminimize interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge should keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the economic interests of the judge's spouse and minor children residing in the judge's household.

F. **Remittal of Disqualification.**

A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

CANON 4

A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A. A judge shall conduct all of the judge's quasi-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties.

B. A judge may speak, write, lecture, teach and participate in other quasi-judicial activities concerning the law, the legal system, and the administration of justice, subject to the requirements of this Code.

C. A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

D. A judge may serve as a member, officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice, subject to the following limitations and the other requirements of this Code.

(1) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(a) will be engaged in proceedings that would ordinarily come before the judge, or

(b) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(2) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:

(a) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(b) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice;

(c) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 4D(2)(a), if the membership solicitation is essentially a fund-raising mechanism;

(d) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

CANON 5

Updated January 2002

A Judge Shall regulate Extra Judicial Activities To Minimize the Risk of Conflict With Judicial Duties

A. **Extrajudicial Activities in General.** A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties.

B. **A Vocational Activities.** A judge may speak, write, lecture, teach and participate in other extrajudicial activities concerning non-legal subjects, subject to the requirements of this Code.

C. **Governmental, Civic or Charitable Activities.**

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

APPENDICES

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

(3) A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal, sororal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 5C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;

(iii) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

E. **Financial Activities.**

(1) A judge shall not engage in financial and business dealings that

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:

(a) a business closely held by the judge or members of the judge's family, or

(b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except for:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Canon 3E;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value, or the aggregate value in a calendar year of such gifts, bequests, favors, or loans from a single source, exceeds $100.00, the judge reports it in the same manner as the judge reports gifts under Section 6B(2).

E. **Fiduciary Activities.**

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

F. **Service as Arbitrator or Mediator.** A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law or Court rule. A judge may, however, take the necessary educational and training courses required to be a qualified and certified arbitrator or mediator, and may fulfill the requirements of observing and conducting actual arbitration or mediation proceedings as part of the certification process, provided such program does not, in any way, interfere with the performance of the judge's judicial duties.

G. **Practice of Law.** A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

CANON 6

Updated January 2002

Fiscal Matters of a Judge Shall be Conducted in a Manner That Does Not Give the Appearance of Influence or Impropriety; a Judge Shall Regularly File Public Reports as Required by Article II, Section 8, of the Constitution of Florida, and Shall Publicly Report Gifts; Additional Financial Information Shall be Filed With the Judicial Qualifications Commission to Ensure Full Financial Disclosure

A. **Compensation for Quasi-Judicial and Extrajudicial Services and Reimbursement of Expenses.**

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extrajudicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in the performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(1) **Compensation.** Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(2) **Expense Reimbursement.** Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, to the judge's spouse. Any payment in excess of such an amount is compensation.

B. **Public Financial Reporting.**

(1) **Income and Assets.** A judge shall file such public report as may be required by law for all public officials to comply fully with the provisions of Article II, Section 8, of the Constitution of Florida. The form for public financial disclosure shall be that recommended or adopted by the Florida Commission on Ethics for use by all public officials. The form shall be filed with the Florida Commission on Ethics on the date prescribed by law, and a copy shall be filed simultaneously with the Judicial Qualifications Commission.

(2) **Gifts.** A judge shall file a public report of all gifts which are required to be disclosed under Canon 5D(5)(h) of the Code of Judicial Conduct. The report of gifts received in the preceding calendar year shall be filed with the Florida Commission on Ethics on or before July 1 of each year. A copy shall be filed simultaneously with the Judicial Qualifications Commission.

APPENDICES

(3) **Disclosure of Financial Interests Upon Leaving Office.** A judge shall file a final disclosure statement within 60 days after leaving office, which reports shall cover the period between January 1 of the year in which the judge leaves office and his or her last day of office, unless, within the 60-day period, the judges takes another public position requiring financial disclosure under Article II, Section 8, of the Constitution of Florida, or is otherwise required to file full and public disclosure for the final disclosure period. The form for disclosure of financial interests upon leaving office shall be that recommended or adopted by the Florida Commission on Ethics for use by all public officials. The form shall be filed with the Florida Commission on Ethics and a copy shall be filed simultaneously with the Judicial Qualifications Commission.

C. **Confidential Financial Reporting to the Judicial Qualifications Commission.**

To ensure that complete financial information is available for all judicial officers, there shall be filed with the Judicial Qualifications Commission on or before July 1 of each year, if not already included in the public report to be filed under Canon 6B(1) and (2), a verified list of the names of the corporations and other business entities in which the judge has a financial interest as of December 31 of the preceding year, which shall be transmitted in a separate sealed envelope, placed by the Commission in safekeeping, and not be opened or the contents thereof disclosed except in the manner hereinafter provided.

At any time during or after the pendency of a cause, any party may request information as to whether the most recent list filed by the judge or judges before whom the cause is or was pending contains the name of any specific person or corporation or other business entity which is a party to the cause or which has a substantial direct or indirect financial interest in its outcome. Neither the making of the request nor the contents thereof shall be revealed by the chair to any judge or other person except at the instance of the individual making the request. If the request meets the requirements hereinabove set forth, the chair shall render a prompt answer thereto and thereupon return the report to safekeeping for retention in accordance with the provisions hereinabove stated. All such requests shall be verified and transmitted to the chair of the Commission on forms to be approved by it.

D. **Limitation of Disclosure.**

Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required by law.

CANON 7

A Judge or Candidate for Judicial Office Shall Refrain From Inappropriate Political Activity

A. **All judges and Candidates.**

(1) Except as authorized in Sections 7B(2), 7C(2) and 7C(3), a judge or a candidate for election or appointment to judicial office shall not:

(a) act as a leader or hold an office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization;

(d) attend political party functions; or

(e) solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions.

(2) A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

(3) A candidate for a judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;

(c) except to the extent permitted by Section 7C(1), shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 7A(3)(d).

B. **Candidates Seeking Appointment to Judicial or Other Governmental Office.**

(1) A candidate for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.

(2) A candidate for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:

(a) such persons may:

(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals; and

(iii) provide to those specified in Sections 7B(2)(a)(i) and 7B(2)(a)(ii) information as to his or her qualifications for the office;

(b) a non-judge candidate for appointment to judicial office may, in addition, unless otherwise prohibited by law:

(i) retain an office in a political organization,

(ii) attend political gatherings, and

(iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other functions.

C. **Judges and Candidates Subject to Public Election.**

(1) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates shall not personally solicit campaign funds, or solicit attorneys for publicly stated support, but may establish committees of responsible persons to secure and manage the expenditure of funds for the candidate's campaign and to obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from any person or corporation authorized by law. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or members of the candidate's family.

(2) A candidate for merit retention in office may conduct only limited campaign activities until such time as the judge certifies that the judge's candidacy has drawn active opposition. Limited campaign activities shall only include the conduct authorized by subsection C(1), interviews with reporters and editors of the print, audio and visual media, and appearances and speaking engagements before public gatherings and organizations. Upon mailing a certificate in writing to the Secretary of State, Division of Elections, with a copy to the Judicial Qualifications Commission, that the judge's candidacy has drawn active opposition, and specifying the nature thereof, a judge may thereafter campaign in any manner authorized by law, subject to the restrictions of subsection A(3).

(3) A judicial candidate involved in an election or re-election, or a merit retention candidate who has certified that he or she has active opposition, may attend a political party function to speak in behalf of his or her candidacy or on a matter that relates to the law, the improvement of the legal system, or the administration of justice. The function must not be a fund raiser, and the invitation to speak must also include the other candidates, if any, for that office. The candidate should refrain from commenting on the candidate's affiliation with any political party or other candidate, and should avoid expressing a position on any political issue. A judicial candidate attending a political party function must avoid conduct that suggests or appears to suggest support of or opposition to a political party, a political issue, or another candidate. Conduct limited to that described above does not constitute participation in a partisan political party activity.

E. **Incumbent Judges.** A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law, the legal system or the administration of justice, or (iii) as expressly authorized by law.

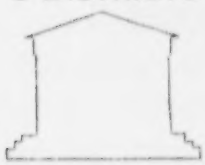
APPENDICES

G. **Applicability.** Canon 7 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 4-8.2(b) of the Rules Regulating The Florida Bar.

FLORIDA COURTS

SUPREME OF FLORIDA

DISTRICT COURTS OF APPEALS
5 DISTRICTS



CIRCUIT COURTS
20 JUDICIAL CIRCUITS

COUNTY COURTS
67 COUNTIES

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FLORIDA COURTS

FLORIDA TRIAL COURT

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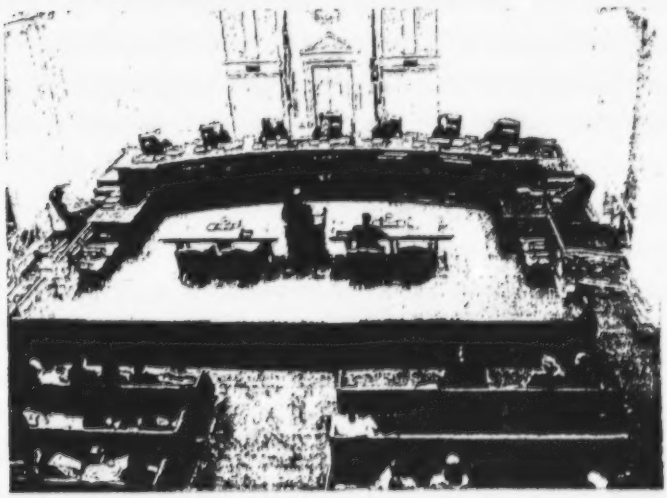
FLORIDA COURTS

FLORIDA SUPREME COURT



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UNITED STATES FEDERAL COURTS

U.S. SUPREME COURT

APPELLATE COURTS

U.S. COURTS OF APPEALS

12 REGIONAL CIRCUIT COURTS OF APPEAL
1 U.S. COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

TRIAL COURTS

U. S. DISTRICT COURTS

94 JUDICIAL DISTRICTS
U.S. BANKRUPTCY COURTS
U.S. COURT OF INTERNATIONAL TRADE
U.S. COURT OF FEDERAL CLAIMS

FEDERAL COURTS AND OTHER ENTITIES OUTSIDE THE JUDICIAL BRANCH

MILITARY COURTS (TRIAL AND APPELLATE)
COURT OF VETERANS APPEALS
U.S. TAX COURT
FEDERAL ADMINISTRATIVE AGENCIES AND BOARDS

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FEDERAL AND STATE JUDGES CHART

	FEDERAL JUDGES	STATE JUDGES
Appointment	Appointed by the President and confirmed by the Senate	Supreme Court Justices and District Courts of Appeal Judges apply through Judicial Nominating Commissions. The JNC provides recommendations to the Governor. The Governor makes final selection and appointment. Circuit and County court judges are elected for a term of six years by a vote of the qualified electors within the territorial jurisdiction of the court.
Tenure	Appointed for life based on good behavior. Can be removed from office through impeachment for treason, bribery or other high crimes and misdemeanors. Salaries cannot be reduced. Federal judges abide by a U.S. Code of Conduct.	After a Supreme Court or DCA Judge has been appointed, he or she must face a merit retention vote in the next general election for a six-year term. The justice or judge will appear on the ballot every six years for a retention vote. Circuit and County court judges stand for election every six years in nonpartisan elections. A Judicial Qualifications Commission vested with jurisdiction to investigate and recommend to the Supreme Court of Florida the removal from office of any justice or judge whose conduct, demonstrates a present unfitness to hold office, and to investigate and recommend the discipline of a justice or judge whose conduct, warrants such discipline. The commission shall have jurisdiction over justices and judges regarding allegations that misconduct occurred before or during service as a justice or judge if a complaint is made no later than one year following service as a justice or judge. The commission shall have jurisdiction regarding allegations of incapacity during service as a justice or judge. All justices and judges shall be compensated only by state salaries fixed by general law.
Establishment	Article III of the US Constitution establishes the Supreme Court and other Inferior Courts as the Congress may from time to time ordain and establish.	Article V of the Florida Constitution establishes the state judicial system including the Supreme Court, Courts of Appeals, Circuit and County courts.
Structure/ Jurisdiction	**U.S. SUPREME COURT** **1 Chief Justice and 8 Associate Justices** **U.S. Courts of Appeals** The 94 U.S. judicial districts are organized into 12 regional circuits, each of which has a U.S. Court of Appeal and 1 U.S. Court of Appeal for the Federal Circuit. A court of appeals hears appeals from the district courts located within its circuit, as well as appeals from decisions of federal administrative agencies. In addition, the Court of Appeals for the Federal Circuit has nationwide jurisdiction to hear appeals in specialized cases, such as those involving patent laws and cases decided by the Court of International Trade and the Court of Federal Claims.	**FLORIDA SUPREME COURT** **1 Chief Justice and 6 Associate Justices** **JURISDICTION. – The Supreme Court:** (1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution. (2) When provided by general law, shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.

FEDERAL AND STATE JUDGES CHART

Structure/ Jurisdiction

(continued)

U.S. TRIAL COURTS

Trial courts include U. S. District Courts (94 judicial districts), U. S. Bankruptcy Courts, U.S. Court of International Trade, and U.S. Court of Federal Trade.

There are 94 Federal Judicial Districts, including at least one district in each state, the District of Columbia and Puerto Rico. Three territories of the United States — the Virgin Islands, Guam, and the Northern Mariana Islands — have district courts that hear federal cases, including bankruptcy cases.

FEDERAL COURTS AND OTHER ENTITIES OUTSIDE THE JUDICIAL BRANCH
Military Courts
(Trial and Appellate)
Court of Veterans Appeals
U.S. Tax Court
Federal administrative agencies and boards

(3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

(4) May review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal.

(5) May review any order or judgment of a trial court certified by the district court of appeal in which an appeal is pending to be of great public importance, or to have a great effect on the proper administration of justice throughout the state, and certified to require immediate resolution by the supreme court.

(6) May review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida.

(7) May issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction.

(8) May issue writs of mandamus and quo warranto to state officers and state agencies.

(9) May, or any justice may, issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

(10) Shall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law

DISTRICT COURTS OF APPEAL
63 Judges – Six year terms
Five Districts
1st District – Tallahassee
2nd District – Lakeland
3rd District – Miami
4th District- West Palm Beach
5th District- Daytona Beach

JURISDICTION:

(1) District courts of appeal shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts, including those entered on review of administrative action, not directly

FEDERAL AND STATE JUDGES CHART

Structure/ Jurisdiction

(continued)

appealable to the supreme court or a circuit court. They may review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court.

(2) District courts of appeal shall have the power of direct review of administrative action, as prescribed by general law.

(3) A district court of appeal or any judge thereof may issue writs of habeas corpus returnable before the court or any judge thereof or before any circuit judge within the territorial jurisdiction of the court. A district court of appeal may issue writs of mandamus, certiorari, prohibition, quo warranto, and other writs necessary to the complete exercise of its jurisdiction. To the extent necessary to dispose of all issues in a cause properly before it, a district court of appeal may exercise any of the appellate jurisdiction of the circuit courts.

CIRCUIT COURTS
509 Judges – Elected six year terms
Twenty Judicial Circuits

JURISDICTION:

The circuit courts shall have originaljurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action prescribed by general law.

COUNTY COURTS
280 Judges – Elected six year terms
At least one Judge in each of the 67 counties

JURISDICTION:

County Courts have original jurisdiction in all criminal misdemeanor cases not cognizable by the circuit courts, of all violations of municipal and county ordinances, and of all actions at law in which the matter does not exceed $5,000, except those within the exclusive jurisdiction of the circuit courts.

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